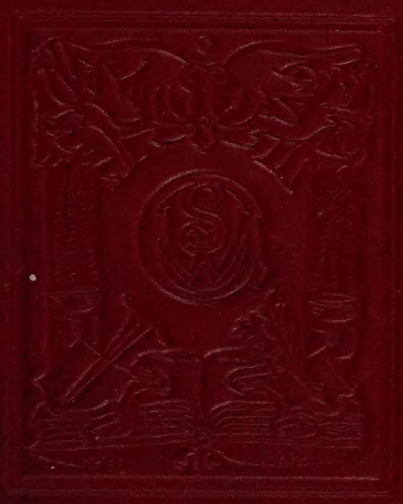

THE SHERIFF COURT STYLE BOOK

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THE

SHERIFF COURT

STYLE BOOK

BY

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"THE PRACTICE OF THE SHERIFF COURT OF SCOTLAND;" "A MANUAL OF THE LAW OF BANKRUPTCY IN SCOTLAND;" AND JOINT AUTHOR OF "BANKING LAW"

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PREFACE

THE present volume is founded on, and largely compiled from, *The Scots Style Book*, for permission to make use of the various forms contained in which the author is indebted to the courtesy of Messrs. William Green & Sons, the publishers. Forms of condescendence and pleas in law can never, at the best, be more than merely illustrative or suggestive. As the forms for these contained in *The Scots Style Book* are probably as satisfactory as such forms can be, the author has been content largely to adopt them, with such verbal alterations and amendments as appeared necessary or desirable, though many new condescendences have been added. For the styles of initial writ the author is solely responsible.

There appears to be a consensus of competent opinion that the initial writ introduced by the Sheriff Courts Act of 1907 is doomed, and that a reversion to the type of petition introduced by the Sheriff Courts Act of 1876 has become not only desirable but imperative. The causes of dissatisfaction are to be found in the "statement of claim" and the fact that no condescendence or separate statement of the facts on which pursuer relies to support his claim is included in the initial writ. By a curious irony it was upon these very causes of dissatisfaction that the strongest anticipations of future advantage to our Sheriff-Court procedure were based. Some commentators on the Act appear to regard the statement of claim as being practically the equivalent of an abbreviated condescendence containing all the material particulars which, under our former practice, were reserved for inclusion in the condescendence; others, whose opinion seems fortified by the specific instructions implied in the terms of the model initial writ contained in the Schedule to the Act, think that the statement of claim should be no more than its name implies, a brief statement of the *nature* of the claim, demand, or complaint made, the particulars on which pursuer founds in support of his claim being reserved, as formerly, for inclusion in the condescendence proper. Either view, in practice, involves difficulties. It must be confessed that, while the idea which underlay the adoption of a form of petition closely analogous to the English writ of summons was, in intention, wholly praiseworthy, the attempt to introduce into our

procedure a type of petition which was wholly unsuited to the requirements of our practice appears signally to have failed in overcoming the defects for which it was designed to provide a remedy. The statutory provisions are based on the assumption that all the various actions known to our procedure are capable of treatment similar to that which is sufficient in the case of an account for goods supplied or in an action for liquidate damages, and is oblivious of the fact that in many petitions to the Court, as *e.g.* in bankruptcy or in separation and aliment, decree cannot be granted on a simple crave unsupported by a relevant statement of facts and circumstances, even although the action be undefended. Nor can it be assumed in practice, as it appears to be assumed in the Statute, that a defender would ordinarily or necessarily hesitate to put the pursuer to the trouble and expense involved in preparing and lodging a condescendence merely because he conceives, or has been advised, that his opponent's claim may ultimately be found entitled to prevail.

The necessary alteration in the form of the initial writ may competently and easily be effected by a short Act of Sederunt, providing specifically for a reversion to the former type of petition, though the observation may be hazarded that while nothing would be lost brevity would be enhanced by the omission from the old preamble of all except the words, *The pursuer craves the Court.* If such an amendment were effected the sole alteration in the styles included in the volume thereby rendered necessary would consist in the deletion of the "statement of claim."

It was intended in the present volume to include forms of accounts, but the recently published admirable and exhaustive work of Mr. Arthur R. Brown has rendered their inclusion not only unnecessary but superfluous. It was also intended to include a short Appendix containing forms of appeal under various statutes, but as such forms present, generally speaking, no points of difficulty, and in order to save space in a volume which threatened to become a little unwieldy, their omission was deemed advisable.

The author desires to express his thanks to Mr. John Disselduff, Sheriff-Clerk Depute, Oban, and to Mr. James R. Hyslop, Sheriff-Clerk Depute, Falkirk, for their kind assistance in the preparation of the volume.

W. W.

GLENLEE, OBAN,
February 1911.

THE SHERIFF COURT STYLE BOOK

Abandonment.—*See* MINUTES.

Acceleration of Dividends.—*See* BANKRUPTCY, No. 22.

Access to House. — *See also* COMMON PROPERTY, DECLARATOR, INTERDICT.

1. By Tenant for Removal of Furniture.

Sheriffdom of at .

A. B. [*designation*], lately tenant of the house, No. Street, , of which defender is proprietor, *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For a decree ordaining the defender to give pursuer access to said house, and to permit him to remove his furniture and effects therein.

Therefore the pursuer craves the Court—

To ordain the defender to give pursuer access to said house, and to allow him to remove his furniture and effects therein; and in the event of defender's refusal, to grant warrant to officers of Court to break open the doors of said premises, to deliver to the pursuer the said furniture and effects, and thereafter to secure said doors; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The defender is the proprietor of the house, No. Street, , of which the pursuer was tenant, under a lease dated till Whitsunday [*or* Martinmas] last.

2. At the expiry of said lease the pursuer removed himself, his family, and servants. As, however, said house was not let to an incoming tenant at the said term, the pursuer, with defender's acquiescence, allowed a part of his furniture to remain.

3. The pursuer desires to remove his furniture, but said house is locked up, and defender refuses to allow pursuer, or anyone on his behalf, to have access to said house or to remove said furniture.

4. Pursuer is not in arrears with any part of the rent of said house, and defender has no lien or right of retention over said furniture.

PLEA IN LAW.

The defender having no lien or right of retention over pursuer's furniture in the said house, the pursuer is entitled to decree as craved, with expenses.

2. By Landlord, to Relet.

Sheriffdom of . at .

A. B. [*designation*], proprietor of the house, No. Street, , *Pursuer*,

against

C. D. [*designation*], lately tenant of said house, *Defender*.

The demand of the pursuer is—

For a decree ordaining the defender to keep open and allow all persons to inspect the house, No. Street, , belonging to defender.

Therefore the pursuer craves the Court—

To ordain defender to keep open and to allow all intending or prospective tenants or lessees to inspect said house at such times and on such days as the Court may appoint from the date of decree till Whitsunday [*or* Martinmas] next, or till said house shall be let; and in the event of defender's failure to permit such inspection, to grant warrant to pursuer, or such other person as the Court may appoint, to open said house at the times, and for the periods and purposes foresaid; and to find the defender liable in expenses, including the expense of making and keeping said house open if necessary.

CONDESCENDENCE.

1. The pursuer let his house, No. Street, , to pursuer for one year from Whitsunday 19 .

2. On or about January last defender left said house and removed to Glasgow, since when the house has remained shut up.

3. The defender's tenancy ceases at Whitsunday next, and it is necessary that intending or prospective tenants should have an opportunity of inspecting it.

4. The defender, however, in breach of his duty as tenant, refuses to allow reasonable access to said house, though repeatedly called on by pursuer to do so, and the authority of the Court is necessary to compel him.

PLEA IN LAW.

The defender having, in breach of his duty as tenant, refused to allow reasonable access to said house for inspection, pursuer is entitled to decree, with expenses, as craved.

Access, Declarator of Right of.—*See* DECLARATOR, No. 13.

Accommodation Works, for the Execution or Maintenance of.

NOTE.—*Under the several Clauses Acts, railways, water-works, and other public works must provide and maintain accommodation works,* e.g. *fences, accesses, supplies of water, drainage, &c., where these have been interfered with or rendered necessary by the proposed railway or other works. The proceedings must be brought in the Sheriff Court, and the decision of the Sheriff-Substitute is final, unless in a few cases where there is an appeal to the Sheriff. There is no appeal to the Court of Session* (*Main,* 21 *R.* 323). *Both the proprietor and the occupier of the lands affected should be made parties to any proceedings* (*Main,* 21 *R.* 1018).

1. For Accommodation Works.

Sheriffdom of at .

A. B. [*designation*], proprietor of the farm of X. in the parish of Z. and county of Y., *Pursuer,*

against

The Railway Company, Street, ,

Defenders.

The demand of the pursuer is—

For a finding in terms of [*quote section of Railway Act or of Clauses Act as to accommodation works*] that defenders in the construc-

tion of their railway, which passes through pursuer's said farm of X., have failed to execute the necessary accommodation works, and for a decree ordaining defenders to execute such works.

Therefore the pursuer craves the Court—

To find that the defenders have failed to execute such accommodation works as will give the pursuer a sufficient supply of water to the field [*describe it*] on his said farm: To ordain them to execute, within such time as the Court may appoint, such accommodation works as shall give the pursuer a sufficient supply of water to the said field, and failing their so doing within the time fixed by the Court, to grant warrant to and authorise the pursuer to execute the said accommodation works at the sight of E. F., civil engineer, , or such other person as the Court shall appoint; and to grant a decree against the defenders for payment of the expenses incurred by the pursuer in executing the said works as the same may be instructed in the course of the procedure to follow hereon; and to find the defenders liable in expenses.

CONDESCENDENCE.

1. The pursuer is proprietor of the farm of , in the parish of . The defenders were incorporated by the Railway Act, 19 , which authorised them to make and maintain a railway between and . By section of the said Act it is provided [*quote section of Railway Act or of Clauses Act as to accommodation works*].

2. The said railway which has now been constructed runs through the pursuer's said farm of . In particular, it passes along the south side of and within the field thereon known as the field, and thus deprives that field of its water supply, which was situated at the south-east corner of the field. A plan of the said field is herewith produced and referred to.

3. In terms of their Act of Parliament, the defenders are bound to provide a sufficient supply of water to the said field; but although the pursuer has frequently called on them to implement their obligation in that respect, they refuse or delay to execute the necessary works.

4. The said field extends to acres or thereby and is old pasture. For want of the necessary water supply the pursuer is unable to use it for grazing cattle as he has been in use to do, and he reserves all claims of damages against the defenders for loss of said grazing.

PLEA IN LAW.

The defenders having failed to execute the necessary works for supplying water to pursuer's said field in terms of the Act of Parliament, the pursuer is entitled to decree as craved, with expenses.

2. By Company to have Accommodation Works held Sufficient, &c.

Sheriffdom of at .

The Railway Company, Street, ,
Pursuers,

against

B. [*designation*], proprietor of the farm of X. in the parish of Y. and county of Z., *Defender.*

The demand of the pursuers is—

For the settlement of a dispute between pursuers and defender, in terms of sec. 61 of the Railway Clauses Consolidation (Scotland) Act, 1845, as to the nature and extent of the accommodation works incumbent on the pursuers in connection with the construction of their railway through the defender's said farm.

Therefore the pursuers crave the Court—

To approve of the accommodation works proposed to be provided by the pursuers on the defender's lands of A., *videlicet* [*give description of the proposed works*]: To find that upon the said works being executed by the pursuers within such time as the Court shall appoint, the pursuers will have duly implemented all obligations incumbent upon them to provide accommodation works for the defender's said lands; or otherwise to determine the kind and number of accommodation works and the suitability and sufficiency thereof for the defender's said lands of A., all in terms of the said Act.

CONDESCENDENCE.

1. The pursuers were incorporated by the Railway Act, 19 , which incorporates the Railways Clauses Consolidation (Scotland) Act, 1845. A copy of the pursuers' said Act is herewith produced. The line of railway which by said statute the pursuers were authorised to make and maintain passes through the farm of , in the parish of , of which the defender is proprietor.

2. The pursuers, in terms of the said statutes, duly gave the defender

notice to treat for the acquisition of the lands required by them on his said farm of : The defender by notice and claim thereafter required the amount of compensation due to him for all claims arising out of the said notice to treat, to be determined by verdict of a jury.

3. The pursuers thereafter tendered to the defender a certain sum as the value of the said lands, and the damages sustained by defender's other lands through the execution of pursuers' works. The said tender was made upon the footing that the pursuers would execute the following accommodation works in full of the obligations incumbent upon them, in terms of the Railways Clauses Consolidation (Scotland) Act, 1845, sec. 60, viz. [*state accommodation works offered*].

4. On 19 , the defender's claim for compensation was laid before your Lordship and a jury, who found him entitled to £ as the value of the lands acquired by pursuers, and £ as compensation for the severance and other damages arising from the execution of the pursuers' works. Decree was duly granted to the defender for said two sums, and they have been duly paid.

5. The said compensation for severance and other damages was assessed by the jury on the footing that the accommodation works above specified and no more should be executed by the pursuers. The defender, however, now declines to accept of the said works as sufficient implement of the pursuers' statutory obligations. The pursuers accordingly make this application under sec. 61 of the Railways Clauses Consolidation (Scotland) Act, 1845.

PLEA IN LAW.

The accommodation works proposed to be executed by the pursuers as set forth in the prayer of the petition being sufficient implement of their statutory obligations to the defender, the pursuers are entitled to decree as craved.

3. To have Accommodation Works Maintained or Restored.

Sheriffdom of at .

A. [*designation*], proprietor of the estate of X. in the parish of Y. and county of Z., *Pursuer*,

against

The Railway Company, Street, ,
Defenders.

The demand of the pursuer is—

For a decree, in terms of the Railway Clauses Consolidation (Scotland) Act, 1845, incorporated in the Act authorising the construc-

tion of defenders' railway, ordaining defenders to put into a sufficient state of repair a wall separating the defenders' line of railway from the pursuer's property at , and erected by defenders in the course of the construction of their railway through the pursuer's lands.

Therefore the pursuer craves the Court—

To remit to B., civil engineer in , or to some other person of skill to be nominated by the Court, to inspect and report on the present state and condition of the said wall: To ordain the defenders to commence and execute the works therein reported to be necessary, within such short space of time as the Court may appoint; and failing the defenders commencing the said works within seven days after the time appointed therefor, or, having commenced, failing to execute the said works within the time appointed for their execution, to grant warrant to the pursuer to execute the same, in terms of the said report, and at the sight of the said B. or such person as the Court shall appoint: To find the defenders liable to the pursuer in the expenses hereby incurred; and to find the defenders liable in expenses.

Condescendence.

1. The pursuer is the proprietor of the estate of X. in the parish of Y. and county of Z. The defenders' line of railway runs through the farm of , on the said estate.

2. Where the defenders' said railway passes through the fields known as the field and the field on said farm, it is fenced therefrom by a stone and lime wall erected by the railway company, in terms of the obligations in their Act of Parliament.

3. The said wall is now, and has for some considerable time past been, in a state of great disrepair. In terms of the Act of Parliament authorising the construction of their railway, which incorporates the provisions of the Railways Clauses Consolidation (Scotland) Act, 1845, the defenders are bound to maintain the said wall in a sufficient state of epair. But notwithstanding repeated applications by the pursuer to the company to implement said obligation, they refuse and delay to do so, and the present application is therefore necessary.

Plea in Law.

The defenders having failed to keep the said wall in a sufficient state of repair, the pursuer is entitled to decree as craved, with expenses.

Account.

1. Ordinary Open Account.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment of £50 for goods supplied to the defender, conform to account attached hereto.

Therefore the pursuer craves the Court—

To grant decree against the defender for payment to the pursuer of £50, with interest from the date of citation [*or, if payment was due under agreement or by custom of trade on a specified date,* from the day of till payment] with expenses; [and to grant warrant to arrest on the dependence].

CONDESCENDENCE.

1. The pursuer sold and delivered to the defender the goods specified in the account attached hereto, at the prices and on the dates therein specified, which prices amount *in cumulo* to the amount sued for.

2. The pursuer has [repeatedly] rendered said account to defender, but he refuses or at least delays to make payment, whereby the present action has been rendered necessary.

PLEA IN LAW.

The pursuer having sold and delivered to the defender the goods specified in the account founded on, at the prices therein stated [*or* the prices charged therefor being reasonable and moderate], he is entitled to decree as craved.

2. Balance of Account.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment of £50, being balance of account due by defender for goods supplied, conform to account hereto attached.

Therefore the pursuer craves the Court—

To grant decree against the defender for payment to the pursuer

of £50, with interest from the date of citation [*or, if payment be due under agreement or by custom of trade on a specified date,* from the day of till payment], with expenses; [and to grant warrant to arrest on the dependence].

CONDESCENDENCE.

1. The pursuer sold and delivered to the defender the goods specified in the account attached hereto, at the prices and on the dates therein specified, which prices amount *in cumulo* to the sum of £75.

2. On the of the defender paid £25 towards reduction of said amount of £75 [*or*, on the various dates specified in said account the defender paid sums amounting *in cumulo* to £25, in reduction of the amount of £75], and the balance still remaining due and resting-owing by the defender amounts to the sum sued for.

3. The pursuer has [repeatedly] rendered the said account to the defender, but he refuses or at least delays to make payment of said balance.

PLEA IN LAW.

The pursuer having sold and delivered to the defender the goods specified in the account founded on, and at the prices therein stated [*or* the prices charged therein being reasonable and moderate], he is entitled to payment of the amount concluded for, being the amount therein contained less the sum of £75 paid to account.

3. Account and Advances made.

Sheriffdom of at .

A. B. [*designation*], *Pursuer,*
against
C. D. [*designation*], *Defender.*

The claim of the pursuer is—

For payment of £50, whereof £30 is in respect of board and lodgings [*or as the case may be*] and £20 for money advanced on loan by the pursuer to defender, conform to account attached hereto.

Therefore the pursuer craves the Court—

To grant decree against the defender for payment to the pursuer of £50, with interest from the date of citation, with expenses.

CONDESCENDENCE.

1. The defender lodged with pursuer from to , and during that time was supplied by pursuer with board and lodgings

at the rate of per week. Defender ceased to reside in pursuer's house on , and at that date was owing pursuer the sum of £30 in respect of said board and lodging.

2. While lodging with pursuer, defender on several occasions, detailed in the account founded on, borrowed sums amounting *in cumulo* to £20.

3. Pursuer has [repeatedly] requested defender to make payment of said sums, which together make up the sum sued for, but the defender refuses or delays to do so.

PLEA IN LAW.

The defender being justly due and resting-owing to the pursuer in the sum sued for, pursuer is entitled to decree as craved.

4. Account for Estimated Work and Extras.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment of £600, whereof £550 is in respect of the erection of a house at , contracted for by defender, and £50 in respect of extras supplied in the course of said erection to defender's order, with interest from .

Therefore the pursuer craves the Court—

To grant decree against the defender for payment to the pursuer of £600, with interest from the date of citation, and expenses; [and to grant warrant to arrest on the dependence].

CONDESCENDENCE.

1. By contract entered into on , the pursuer contracted with defender to erect a house at for the sum of £550, said price to be payable on conclusion of the contract. The said house was erected and the contract duly completed on .

2. During the course of the erection of said house the defender required certain alterations and deviations upon the plan to be effected. Said alterations consisted in [*state them*]. The cost of effecting these alterations upon the plan as originally contracted for amounted to £50.

3. The pursuer has [repeatedly] requested the defender to make payment of these sums amounting together to the sum sued for, but the defender refuses or delays to do so.

PLEA IN LAW.

The defender being, in respect of the contract founded on and of the services rendered in addition to those stipulated for under the contract, justly due and resting-owing to the pursuer in the sum sued for, decree as craved should be granted.

5. Account for Legal Services, and Taxation.

NOTE.—*A law agent has several methods for recovering payment of an account for law business. In every case he may raise an ordinary action for payment, either in the Court of Session or Sheriff Court. Where the action is for costs incurred in judicial proceedings,* (1) *he may, either during or after their termination, present a petition for taxation and payment; or* (2) *he may apply to the judge before whom the cause depends or has been heard, for a charging order for payment out of the property recovered or preserved by the proceedings for his client* (*Law Agents Act*, 1891, *sec.* 6). *In every case the account is subject to taxation, and should be so sued for.*

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment of the account attached hereto incurred to the pursuer by defender for legal business performed on his behalf and for money disbursed in connection with said business.

Therefore the pursuer craves the Court—

To remit the said account to the auditor of Court for taxation as between agent and client, and thereafter to decern against defender for payment of the amount which the auditor shall report as being properly due, with interest from the date of citation, and expenses; [and to grant warrant, &c.].

(or, alternatively)

The claim of the pursuer is—

For payment of £50, or such sum as may, after the account attached hereto has been taxed by the auditor of Court, be found due by defender in respect of legal services rendered to him by pursuer.

Therefore the pursuer craves the Court—

To grant decree against the defender for payment of £50, or such sum as shall, after taxation, be found due to pursuer by

defender, with interest from the date of citation and expenses; [and to grant warrant to arrest on the dependence].

CONDESCENDENCE.

1. The pursuer as defender's law agent, and on his instructions, conducted in the Sheriff Court of an action at defender's instance against . Said action has been concluded, and the pursuer duly rendered his account to defender, who, however, refuses or delays either to pay it or to agree to remit it to the auditor of Court for taxation.

2. Said account is moderately and reasonably charged. The pursuer has repeatedly offered to submit it to taxation, but the defender refuses to agree.

PLEA IN LAW.

The pursuer, on defender's instructions, having rendered the services and made the outlays specified in the account founded on, is entitled to decree for the taxed amount thereof, with expenses.

6. By Assignee of Account.

Sheriffdom of at .

A. B. [*designation*], assignee of X. Y. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment of £50 for goods supplied to X. Y. [*designation*], conform to account attached hereto, of which debt the pursuer is the assignee.

Therefore the pursuer craves the Court—

To grant decree against the defender for payment of £50 to pursuer, with interest from the date of citation, and expenses; [and to grant warrant to arrest on the dependence].

CONDESCENDENCE.

1. The goods specified in the annexed account were supplied to defender by Messrs. X. Y. [*designation*] on the dates and at the prices therein specified. [Said prices were moderate and reasonable.]

2. The pursuer has acquired right to payment of said account by indorsation thereon by the said X. Y., dated .

3. The pursuer has [repeatedly] requested the defender to make payment of said account, but the defender refuses or delays to do so.

PLEA IN LAW.

The defender being justly indebted and resting-owing to pursuer, as indorsee foresaid, the sum sued for, decree as craved should be granted, with expenses.

7. By Trustee under Trust-Deed.

Sheriffdom of at .

A. B. [*designation*], trustee for the creditors of X. Y. [*designation*] under trust-deed dated , *Pursuer*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment to him of £50 for goods supplied conform to account attached hereto.

Therefore the pursuer craves the Court—

To grant decree against the defender for payment to pursuer of £50, with interest from the date of citation, and expenses; [and to grant warrant to arrest on the dependence].

CONDESCENDENCE.

1. The goods specified in the account founded on were supplied to defender by X. Y. [*designation*] on the dates and at the prices therein specified. [Said prices were reasonable and moderate.]

2. By trust-deed, dated , the pursuer was appointed a trustee for the creditors of the said X. Y.

3. The pursuer, as trustee foresaid, has applied to defender for payment of the account founded on, but the defender refuses or delays to make payment.

PLEA IN LAW.

The defender being justly indebted and resting-owing to the pursuer, as trustee foresaid, the sum sued for, decree as craved should be granted, with expenses.

8. To Stockbroker and for Delivery of Scrip

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuer is—

(1) For payment of £500, balance due to pursuer by defender in respect of stocks bought and sold, conform to account hereto attached, and (2) for delivery of scrip for 100 fully-paid shares in the Company [*or* for delivery of a valid transfer of 100 shares of the stock of the Company, *or as the case may be*] sold by pursuer on defender's instructions, conform to entry in the said account.

Therefore the pursuer craves the Court—

To grant decree against the defender for payment to the pursuer of £500, with interest from the date of citation: To ordain the defender forthwith to deliver to pursuer certificate for 100 shares of the Company, together with a duly executed transfer thereof [*or* of a valid transfer of 100 shares of the stock of the Company, *or as the case may be*], and to find defender liable in expenses and decree therefor.

Condescendence.

1. On the various dates libelled in the account founded on pursuer bought and sold the stock and shares specified on the instructions of defender. The sum sued for is the balance remaining due by defender to pursuer as the result of these transactions.

2. As detailed in said account under date the pursuer sold 100 shares [*or* £100 stock, *or as the case may be*] of the Company for delivery to the purchaser on . The price of said shares [*or* stock] has in said account been duly credited to defender.

3. The pursuer has requested defender to deliver the certificate for said shares [*or* stock] with a duly executed transfer in favour of X. Y. as the purchaser of said shares [*or* stock] to enable pursuer to implement his bargain with said purchaser, but defender refuses or delays to do so.

4. Pursuer is personally liable to the said purchaser for implement of his bargain in the event of defender's failure to supply the said certificate and transfer.

Pleas in Law.

1. The pursuer having, on defender's instructions, bought and sold the stock and shares specified in account founded on, and the sum first craved being the balance due to pursuer in respect of said transactions, decree for the amount should be granted, with expenses.

2. The pursuer having, on defender's instructions, sold the shares [*or* stock] of the Company specified in the account founded on,

and delivery of the certificate and transfer being necessary to implement the said sale, decree of delivery as craved should be granted, with expenses.

Accounting.—*See also* Exhibition and Bankruptcy.

Note.—*The action is competent whenever the pursuer has the right to demand an account. As it is usually raised where a balance is due to the pursuer, a conclusion for payment is always included; but it may be raised even where no money is due, provided there is a duty on the part of the defender to disclose to the pursuer a true state of account. If no defence is made, decree will be given for the random sum concluded for. It is often convenient to insert a conclusion for a random sum of damages.*

1. By Owner of Goods against Consignee.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For an accounting with respect to produce [*or* goods] consigned by pursuer to defender conform to statement hereto attached, or failing such an accounting, for payment by the defender to pursuer of £50, with interest.

Therefore the pursuer craves the Court—

To ordain the defender to produce a full account of his intromissions with said produce [*or* goods]; and upon the balance due to pursuer being ascertained, to grant a decree against the defender for payment thereof, with interest from the date of citation; failing his accounting, to grant a decree against the defender for payment to pursuer of £50, with interest as aforesaid: To ordain the defender to deliver within days [*or* such time as the Court may appoint] to the pursuer or his order any or all of such produce [*or* goods] as still remain in his possession unsold or undisposed of; and to find defender liable in expenses.

Condescendence.

1. On or about the pursuer consigned to defender the produce [*or* goods] specified in the statement founded on for sale by

defender on behalf of pursuer. The said produce [*or* goods] were delivered to defender on or about , and the defender accepted the consignment on the terms condescended on.

2. The pursuer avers that all, or at least a considerable part, of said consigned produce [*or* goods] has been sold by the defender.

3. The pursuer has called upon the defender for an account of his intromissions with the said consigned produce [*or* goods], and for redelivery of such part thereof as remains in defender's possession unsold, but defender refuses or delays to do either.

4. The pursuer avers that upon an accounting a sum of at least £50 will be found to be due him by defender.

PLEA IN LAW.

The defender, as consignee foresaid, being bound to account to pursuer for the price of the produce [*or* goods] sold, and to redeliver to pursuer any produce [*or* goods] remaining in his possession unsold, pursuer is entitled to an accounting and to delivery as craved; or alternatively, and failing such an accounting and delivery, to payment by the defender of the sum of £50 as craved, with interest and expenses.

2. By Grantor of Trust-Deed against Trustee.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], as trustee under trust-deed granted by pursuer, *Defender*.

The demand of the pursuer is—

For an accounting of the intromissions of defender, as trustee under trust-deed granted by the pursuer on , with the pursuer's estate and effects, and failing such an accounting, for payment to the pursuer of £50, with interest from the date of citation, and expenses.

Therefore the pursuer craves the Court—

To ordain the defender to produce an account of his said intromissions, and to grant decree against defender for payment of any balance which may appear to be due to pursuer, with interest from the date of citation; and failing such an accounting, to grant decree against the defender for payment to the pursuer of £50, with interest as aforesaid and expenses; [and to grant warrant to arrest on the dependence].

CONDESCENDENCE.

1. The pursuer on granted a trust-deed in favour of defender.

2. Under the terms of said trust-deed defender was bound to realise pursuer's stock-in-trade, and collect the book debts and other estate due to pursuer, and, after distributing said estate rateably among the just and lawful creditors of pursuer, to account to pursuer for any balance which might remain in defender's possession.

3. The defender has distributed pursuer's estate among pursuer's creditors, who have, it is averred, all received 20s. in the £.

4. The pursuer avers that after paying his creditors in full there remains in defender's hands a sum of not less than £50.

5. In terms of said trust-deed, pursuer is entitled to an accounting with defender of his intromissions with pursuer's estate, and to payment of any balance which remains in defender's hands.

6. The pursuer has [repeatedly] called upon defender for an accounting of his intromissions with pursuer's estate, but defender refuses or delays to do so.

PLEA IN LAW.

The defender being, in terms of the trust-deed founded on, bound to account to pursuer for his intromissions with pursuer's estate, and to pay pursuer any balance remaining in his hands after pursuer's creditors have been paid in full, pursuer is entitled to an accounting and to payment of said balance as craved; or alternatively, and failing such an accounting and payment, to payment by the defender of £50, with interest and expenses as craved.

3. By Descriptive Firm against Former Manager.

Sheriffdom of at .

The Scots Granolithic Company, carrying on business at , and A. B., C. D., and E. F., three of the partners of said company, *Pursuers*,

against

X. Y. [*address*], former manager of pursuers' business, *Defender*.

The demand of pursuers is—

For an accounting by defender, as manager of pursuers' business from to , of his intromissions with the funds and property of the pursuers during said period, and failing such accounting, for payment of £500, with interest and expenses.

Therefore the pursuers crave the Court—

To ordain the defender [to deliver to pursuers all ledgers, day or cash-books, or other books, accounts, vouchers, and other papers and documents in his custody or possession belonging to pursuers or connected with the affairs of pursuers' said company]: To produce a full account of his intromissions as manager foresaid with the funds and property of pursuers from till : To grant decree against the defender for payment to pursuers of such sum as may appear to be the balance due to them in respect of said intromissions; failing production by defender of an account of his intromissions as aforesaid [or in the event of said account being in pursuers' opinion unsatisfactory,] to remit to a person of skill to examine the accounts and books of pursuers' company from till , and to report what, if any, sum is payable to pursuers by defender in respect of his said intromissions, and to grant decree against the defender for such sum with interest [*or* to grant decree against the defender for payment to pursuers of £500, with interest from the date of citation] and expenses; [and to grant warrant to arrest on the dependence].

Condescendence.

1. The defender was appointed manager of pursuers' business at on , and was dismissed from their employment on . During that time he had control and management of pursuers' business at , and of the cash and books.

2. [Defender is bound to deliver to pursuers all books, documents, and vouchers belonging to pursuers or connected with the affairs of pursuers' business at .]

3. Defender is bound to produce a full account of his intromissions as manager aforesaid with the affairs of pursuers' said business.

4. The pursuers aver that on an accounting a sum of not less than £500 will be found to be due by defender to pursuers.

5. The pursuers have [repeatedly] called on defender [to deliver the books, documents, and vouchers in his possession belonging to pursuers or relating to the affairs of their said business, and] to produce an account of his intromissions as manager of their business between the dates mentioned, but defender refuses or delays to do so [*or* either].

Plea in Law.

The defender [being bound to deliver the books, documents, and vouchers in his possession belonging to pursuers or relating to their

said business and] to account, as manager aforesaid, for his intromissions with the funds and property of the pursuers from till , the pursuers are entitled to decree of [delivery and] accounting, and to payment by defender of the balance which may appear to be due by him to them as craved, with expenses; or alternatively, and failing such [delivery and] accounting, to payment by the defender [of such sum as the reporter may report to be due by defender to pursuer], [*or* of £500], with interest from the date of citation and expenses.

4. By Joint Adventurer.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], as partner in a joint adventure with pursuer, *Defender*.

The demand of the pursuer is—

For an accounting by the defender of the profits of a joint adventure in which pursuer and defender engaged under an agreement, dated , for the purchase and sale of a cargo of potatoes *ex* s.s. *Vigilant* [*or* of a cargo of mahogany in Mexico, *or as the case may be*], and failing such accounting, for payment by the defender to pursuer of £50.

Therefore the pursuer craves the Court—

To ordain the defender to produce an account of his intromissions [as manager of said joint adventure], and to pay to pursuer the sum of £50, or such other sum as shall appear to be the pursuer's share of the profits, with interest from the date of citation; or alternatively, and failing such an accounting by defender, to grant a decree against defender for payment to the pursuer of £50, with interest from the date of citation, and expenses; [and to grant warrant to arrest on the dependence].

Condescendence.

1. By agreement dated , the pursuer and defender entered into a joint adventure for the purchase [*or* the importation] and sale of a cargo of potatoes *ex* s.s. *Vigilant* [*or as the case may be*].

2. The management of the joint adventure was left in defender's hands, owing to his practical knowledge of the trade.

3. In terms of said agreement, the profits of the adventure were

to be shared equally between pursuer and defender [*or* in the ratio of three-fifths and two-fifths respectively, the parties contributing capital for the purchase of said cargo in similar ratios, *or as the case may be*].

4. The said cargo was duly purchased and sold by defender, and pursuer avers that a profit of not less than £50 resulted.

5. The pursuer has called upon defender to give an account of his intromissions with respect to the sale and purchase of said cargo, and to pay pursuer his share of the resultant profit, but defender refuses or delays to do either.

PLEA IN LAW.

The pursuer, as partner with defender in the joint adventure condescended on, being entitled to an equal share of the profits of said adventure, and to an accounting from the defender of his intromissions in connection therewith, decree for an accounting and for payment of such sum as may be found due, with interest from the date of citation, should be granted as craved, with expenses; or alternatively, and failing such accounting and payment, decree should be granted for payment by the defender to pursuer of £50, with interest as aforesaid and expenses.

5. By Ex-Partner against Remaining Partner.

Sheriffdom of at .

A. B. [*designation*], as partner in the now dissolved firm of , *Pursuer*,

against

C. D. [*designation*], as remaining partner in said firm, *Defender*.

The demand of the pursuer is—

For an accounting by defender of pursuer's interest in the firm of , of which, till 31st December last, when he retired, the pursuer was a partner [*or* of which pursuer and defender were sole partners], and for payment of the balance which may be found due by defender to pursuer; or alternatively, and failing such an accounting, for payment by the defender to pursuer of £500, with interest and expenses.

Therefore the pursuer craves the Court—

To ordain the defender forthwith [or within days] to produce an account shewing the pursuer's interest in said firm as at ; failing production of said account, or in the event of its not proving in the pursuer's opinion satisfactory, to remit to a person of skill to examine the books and accounts of and relating

to the business and affairs of said firm [from] up to and including the said [*date*], and to report to the Court *quam primum* what sum, if any, is due to the pursuer as his share and interest in the profits and capital of said business as at the said date; for that purpose to ordain the defender to allow the reporter access to all necessary books, documents, and vouchers, and to grant decree against the defender for payment to the pursuer of such sum or sums as the reporter may report to be due to pursuer, with interest from said date and expenses; or alternatively, and in the event of defender's failure to produce said account within the time ordered, or to allow the reporter reasonable and necessary access to the books, documents, and vouchers of said firm, to grant a decree against the defender for payment to the pursuer of £500, with interest from the said date, and expenses; [and to grant warrant, &c.].

Condescendence.

1. The pursuer became a partner in the firm of [*or* pursuer and defender entered into partnership under the firm name of , *or as the case may be*] upon , and the firm was dissolved by the retiral of the pursuer [*or as the case may be*] upon .

2. By deed of co-partnership, which is referred to for its terms, it was stipulated that [*state briefly the material provisions of the contract*].

3. At the date of his retiral pursuer avers that his share of the capital and interest of and in the said business amounted to not less than £500, which defender was bound to pay him on his retiral.

4. Pursuer has repeatedly called on defender to produce an account shewing pursuer's interest in the business as at said date, but defender delays or refuses to do so.

Plea in Law.

Pursuer being entitled to an accounting by defender of pursuer's interest in the capital and profits of said business as at the date of pursuer's retiral therefrom, decree for an accounting should be granted, with interest and expenses as craved; or alternatively, and failing such an accounting, decree for payment by defender to pursuer of £500, with interest and expenses, should be granted as craved.

6. Against Superseded Factor or Trustee.

Sheriffdom of at .

A. B. [*designation*], proprietor of , *Pursuer*,

against

C. D. [*designation*], as former factor [*or* trustee] of said property, *Defender*.

The demand of pursuer is—

For an accounting by defender as factor [*or* trustee] of his intromissions with pursuer's property from till ; for payment of any balance which may be found due, with interest and expenses; or alternatively, and failing such accounting, for payment by defender to pursuer of £50, with interest and expenses.

Therefore the pursuer craves the Court—

To ordain the defender to produce an account of his intromissions as factor [*or* trustee] foresaid with pursuer's property: To grant decree against defender for payment of such sum as may be found due to pursuer, or failing an accounting as craved, to grant decree against defender for payment to pursuer of £50, with interest from the and expenses.

Condescendence.

1. On or about the defender was appointed factor on the pursuer's property situated at [*or as the case may be*], and continued to act as pursuer's factor from that date until . During that time he collected the rents due by the tenants.

2. Pursuer avers that the whole of the rents so collected have not been accounted for by defender, and that there remains in his hands due to pursuer a sum of not less than £50.

3. Pursuer has [repeatedly] called on defender for an account of his intromissions with said properties as factor foresaid, but the defender refuses or delays to do so.

Plea in Law.

The defender, as pursuer's factor foresaid, being bound to account to pursuer for his intromissions with the rents of pursuer's said property, pursuer is entitled to decree of accounting, with interest and expenses as craved; or alternatively, and in the event of defender's refusal or failure to account, to decree for payment by the defender of £50, with interest and expenses as craved.

7. By Agent on Commission against Principals.

Sheriffdom of at .

A. B. [*designation*], as former agent on commission of defenders, *Pursuer*,

against

The Sanitas Underclothing Company, Limited [*address*], *Defenders.*

The demand of the pursuer is—

For an accounting by the defenders of the sales of their manufactures or goods in Scotland, other than through the agency of the pursuer as their duly appointed and credited agent, from till ; and for payment of a commission of 5 per cent. on all such sales, with interest and expenses.

Therefore the pursuer craves the Court—

To produce a statement shewing the sales of their manufactures and goods effected directly with defenders or through agents other than pursuer within Scotland between and :

To grant decree for payment to the pursuer of 5 per cent. on the ascertained value of all such sales, with interest from the date of citation: To interdict defenders from selling their goods or manufactures to purchasers in Scotland direct or through the agency of any person other than pursuer till the :

To find defenders liable in expenses; [and to grant warrant, &c.].

Condescendence.

1. The pursuer, by agreement dated , was appointed by defenders their sole agent in Scotland for the sale of all goods sold or manufactured by them, the commission agreed to be paid to pursuer being at the rate of 5 per cent. on all sales effected.

2. In terms of said agreement defenders undertook not to sell their goods or manufactures in Scotland, except through the agency of pursuer, from the till [*or* for years from the date of said agreement].

3. It has recently come to pursuer's knowledge that defenders, in breach of said agreement, have for some time been effecting sales of their goods and manufactures in Scotland without the intervention of pursuer.

4. The pursuer is, in terms of the agreement founded on, entitled to a commission of 5 per cent. on all sales of defenders' goods or manufactures in Scotland, whether effected through his agency or not.

5. The pursuer has called upon the defenders to produce an account of all sales of their goods or manufactures in Scotland within the period to which the said agreement refers, but the defenders refuse or delay to do so.

6. The pursuer, in terms of said agreement, is entitled to act as sole agent in Scotland for the sale of defenders' goods or manufactures till , and is therefore entitled to have the defenders interdicted from selling their goods or manufactures in Scotland either direct or through the agency of any other person till said date.

PLEAS IN LAW.

1. The pursuer, in terms of the agreement founded on, having been appointed by defenders as sole agent in Scotland for the sale of their goods and manufactures from till , is entitled to decree of accounting by defenders, with interest and expenses, as craved.

2. The pursuer, as agent foresaid, being entitled in terms of said agreement to a commission of 5 per cent. on all sales of defenders' goods or manufactures in Scotland between said dates, is entitled to decree for payment by defenders of 5 per cent. on such sum as may be ascertained to be the value of said sales.

3. The pursuer, as agent foresaid, and in terms of the agreement founded on, is entitled to decree interdicting defenders from selling their goods or manufactures in Scotland till , as craved, with expenses.

8. By Grantor of Heritable Bond against Creditor.

Sheriffdom of at .

A. B. [*designation*], as proprietor of , *Pursuer*,

against

C. D. [*designation*], as heritable creditor on said property, *Defender*.

The demand of the pursuer is—

For an accounting by defender as holder of a bond and disposition in security dated , of his intromissions with the rents of pursuer's heritable property situated at , the rents of which defender uplifted as heritable creditor in possession in virtue of a decree of maills and duties, dated , and for payment by defender of the sum which shall be ascertained to be the balance due to him, or alternatively, and failing such an

accounting, for payment by the defender of £100, with interest and expenses.

Therefore the pursuer craves the Court—

To ordain the defender to produce an account of his intromissions, as heritable creditor in possession, with the rents of said property from and after the term of : To grant a decree against the defender for payment to the pursuer of such sum as shall, upon said accounting, be ascertained to be due to pursuer, with interest from the date of citation, or, in the event of the defender's failure so to account, to grant a decree against him for payment to the pursuer of £100, with interest as aforesaid; further, to ordain defender to deliver to pursuer a valid discharge of said bond and disposition in security, together with the title-deeds in defender's custody relating to said subjects: To find defender liable in expenses; [and to grant warrant, &c.].

Condescendence.

1. The pursuer is owner of heritable subjects situated at and forming [*description*].

2. By bond and disposition in security dated , and recorded , the pursuer conveyed the said subjects to defender in security for repayment with interest of a sum of £1000 advanced by defender to pursuer.

3. Pursuer has fallen into arrears with the payment of the interest due on said bond, and at the term of the defender, by virtue of a decree of maills and duties, of date , entered into possession of said subjects, and has since that date intromitted with the rents.

4. Out of the rents so uplifted the defender has not only repaid said advance with the interest due, but has a balance in his hands of not less than £100, for which he is bound to account to pursuer.

5. The pursuer has [repeatedly] called on defender to account for his intromissions with the rents of said property, to pay pursuer the balance remaining in his hands, after paying off said bond, principal, and interest, and to deliver to pursuer a valid discharge of said bond and disposition, together with the title-deeds in defender's possession relating to said subjects, but the defender refuses or delays to do so.

Pleas in Law.

1. The defender, as heritable creditor in possession of the subjects condescended on, being bound to account to pursuer for his intromissions with the rents thereof, and to pay the pursuer the balance which

shall be ascertained to be due to him, decree of accounting and payment, with interest and expenses, as craved, should be granted.

2. The defender being bound to account to pursuer as aforesaid, the pursuer is entitled, in the event of defender's failure to do so, to decree for payment by the defender of £100, with interest and expenses, as craved.

3. The defender having repaid said advance, principal and interest, out of the rents uplifted by him, and being bound to deliver to pursuer a valid discharge of said bond and disposition, together with the title-deeds relating to said subjects in his possession, pursuer is entitled to decree of delivery, with expenses, as craved.

See also DELIVERY OF WRITS BY LAW AGENT.

9. By Residuary Legatee against Trustees.

Sheriffdom of at .

A. B. [*designation*], residuary legatee of the deceased G. H. [*designation*], *Pursuer*,

against

C. D. and E. F. [*designations*], surviving trustees nominated by and acting under the trust-disposition and settlement of the said G. H., *Defenders*.

The demand of the pursuer is—

For an accounting by defenders as trustees foresaid of their intromissions with the estate of the said G. H., and for payment of £ , with interest from the date of citation, and failing such accounting, for payment by defenders of £ , with interest as aforesaid, and with expenses.

Therefore the pursuer craves the Court—

To ordain the defenders to produce an account of their intromissions, as trustees foresaid, with the trust estate of the said G. H., and to pay the pursuer £ , or such sum as may appear to be the balance due him, with interest from the date of citation, and failing such an accounting, to grant a decree against defenders for payment to pursuer of £ , with interest as aforesaid, and to find defenders liable in expenses.

CONDESCENDENCE.

1. The defenders are the trustees nominated by and acting under the trust-disposition and settlement of the deceased G. H. [*designation*], dated and registered in the Books of Council and Session .

2. The purposes of the said trust-disposition and settlement were [*state purposes, as, e.g.* (1) for payment of the testator's deathbed and funeral expenses; (2) payment to the testator's wife, F. H., should she survive him, of a free liferent annuity of £ ; and (3) on the termination of said annuity, payment to the pursuer of the whole residue of the testator's estate].

3. The said G. H. died at on , survived by the said F. H. F. H. died at on , and the residue of the said estate then became payable to pursuer.

4. The pursuer has [repeatedly] called upon the defenders to account to pursuer for their intromissions with said estate, and to pay him the residue thereof, but they refuse or delay to do so.

5. At the date of the said G. H.'s death his means and estate amounted to at least £ , and the pursuer avers that on an accounting defenders are due him not less than £ .

PLEA IN LAW.

Defenders, as trustees foresaid, being bound to account to pursuer for their intromissions with said estate, and to pay him the residue thereof, decree should be granted, with expenses, as craved.

10. By Beneficiary against Executor.

(*The form for this may easily be adapted from the preceding, with which it is nearly identical.*)

11. With Conclusion for Continuous Accounting.

Sheriffdom of at .

A. B. [*designation*], proprietor of the lands of X., *Pursuer*,

against

C. D. [*designation*], lessee of the coal and other minerals on pursuer's said estate, *Defender*.

The demand of the pursuer is—

For an accounting by defender as lessee foresaid of the coal and other minerals recovered by him, and for payment of royalties due and to become due; and failing such accounting, for payment by defender of £ , under reservation of pursuer's claims for future royalties.

Therefore the pursuer craves the Court—

To ordain the defender to produce an account of all coal and other

minerals recovered by defender from the Y. pit situated on pursuer's estate of X. from the till the date of decree hereon, and to grant a decree against the defender for payment to pursuer of such sum as may be found to be due by defender in name of royalties, lordships, or wayleaves, with interest from the several terms of Whitsunday or Martinmas in each year, when the royalties, lordships, or wayleaves for the preceding half-year became due, under deduction of any sums paid to account; and further to grant a decree for payment by defender to pursuer at the term of next of such further sum as may be found to be the amount of the royalties, lordships, or wayleaves then due to pursuer, with interest as aforesaid, and in like manner for payment at each succeeding term of Whitsunday or Martinmas thereafter during the dependence of this action of such sums as may be found to be the amount of royalties, lordships, or wayleaves then payable to pursuer, with interest foresaid; and failing such accounting, to grant a decree against the defender for payment to pursuer of £ as the amount due to pursuer for royalties, or lordships, or wayleaves from the said till the date of decree hereon, with interest from the date of citation, under reservation of all claims by pursuer for royalties, lordships, or wayleaves, which may emerge subsequent to the date of said decree; and to find defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is the proprietor of the estate of X. in the parish of Z., and the defender is the lessee of the coal and other minerals on said estate, known as the X. coalfield, under a lease in his favour granted by pursuer, dated .

2. By said lease it is provided [*state stipulations as to royalties on minerals*].

3. The defender is also the lessee of the coalfield of W. situated in the adjoining estate of W., the minerals of which can be conveniently wrought along with those of the X. coalfield. The said lease between pursuer and defender provided [*state provision as to wayleave dues on minerals brought through pursuer's property*].

4. Under said leases the defender has wrought the minerals in the said coalfields of X. and W., and has brought the coal in the W. coalfield to the surface of the X. pit on pursuer's estate. The defender has rendered half-yearly statements of the amount due by him on royalties and wayleaves, and has paid the amounts therein specified as due.

5. Pursuer has recently discovered that said statements were defective and misleading, and failed to shew the true balance due by defender either for royalties or wayleaves.

6. The defender, though called upon, refuses to render full statements of all minerals wrought by him, and to make payment of the royalties and wayleaves due in respect thereof.

PLEA IN LAW.

The defender being bound to account to pursuer and to pay the balance due upon such an accounting, or, failing an accounting, to pay pursuer the sum craved, decree should be granted with expenses, as craved.

Accounts, of Expenses.—*See* APPENDIX.

Act of Grace, for Aliment under.—*See* GRACE, ACT OF.

Ad Factum Præstandum.—*See* CONTRACT, DELIVERY, IMPLEMENT, REMOVAL, RESTORATION.

Adherence and Aliment.

NOTE.—*The opinion has been expressed that actions of adherence are now competent in the Sheriff Court (see Samuel* v. *Samuel,* 1909, 1 *S. L. T.* 245; 25 *S. C. R.* 99). *It must not, however, be assumed in the absence of authoritative decision that the provisions of the Sheriff Courts Act of* 1907 *afford justification for the expression of this opinion. If it be assumed that the action is competent, the writ must be served personally on the defender if he be not resident in Scotland; but this may be effected by any person, whether an officer of the law or not. Arrestment on the dependence is incompetent.*

Sheriffdom of at .

A. B. or D., residing at , wife of the defender, *Pursuer,*

against

C. D. [*designation*], lately residing at , and now at , *Defender.*

The claim of the pursuer is—

For declarator that defender is bound to adhere to the pursuer and cohabit with her as his wife, and for a decree ordaining him to do so during their joint lives; and for payment by the defender

to the pursuer of £ yearly, payable half-yearly at Whitsunday and Martinmas, as aliment.

Therefore the pursuer craves the Court—

To find and declare that the pursuer being the lawful wife of the defender, the defender is bound to adhere to the pursuer and to cohabit with her, and to treat and entertain her at bed and board as his wife: To ordain the defender to adhere to the pursuer, and to cohabit with her, and to treat and entertain her at bed and board as his wife during their joint lives: To grant a decree against the defender for payment to the pursuer of £ sterling yearly for aliment, payable half-yearly and in advance by equal portions, beginning the first term's payment thereof as at the term of Whitsunday last, 19 , for the half-year immediately following, and so forth half-yearly thereafter during the joint lives of the pursuer and defender, or until the said parties adhere to each other, with interest on each half-year's aliment from the term of payment until paid; and to find the defender liable in expenses.

CONDESCENDENCE.

(*The Condescendence may be adapted from those given under Aliment.*)

PLEA IN LAW.

The defender being the pursuer's husband, and being bound to adhere to and aliment her, the pursuer is entitled to decree, with expenses, as craved.

Adjudication.—*See* CONSTITUTION AND ADJUDICATION.

Admission, to Poor's Roll.—*See* POOR'S ROLL.

Admission, as Sheriff Officer.—*See* SHERIFF OFFICER.

Admissions.—*See* MINUTES.

Advances.—*See* PAYMENT, RELIEF, Nos. 5, 6 and 7.

Adventurer, Joint.—*See* JOINT ADVENTURE.

Advertisement, for Interdict against Insertion of.—*See* INTERDICT.

Advertisement, Slanderous.—*See* SLANDER, No. 2.

Affidavit.—*See* BANKRUPTCY.

Affiliation.—*See* ALIMENT.

Agent, for Accounting by, against Principals.

—*See* ACCOUNTING, No. 7.

Agricultural Holdings Act, 1908.

1. For Order on Arbiter to State a Case for the Opinion of the Sheriff (Sched. 2, s. 9).

Sheriffdom of at .

A. B. [*designation*], *Pursuer,*

against

X. Y. [*designation*], as arbiter in an arbitration between pursuer and C. D. [*designation*], and the said C. D. for his interest, *Defenders.*

The demand of the pursuer is—

For a decree ordaining defender as sole arbiter in the arbitration under the Agricultural Holdings Act, 1908, between pursuer and the said C. D., to state a case for the opinion of the Court.

Therefore the pursuer craves the Court—

To ordain the defender, as sole arbiter in the arbitration under the Agricultural Holdings Act, 1908, between pursuer and the said C. D. relative to improvements made on the farm of during pursuer's tenancy thereof, to state a special case for the opinion of the Sheriff upon the following question of law which has arisen in the course of the arbitration, viz. :—

[*State question of law.*]

CONDESCENDENCE.

1. The pursuer was, till [Whitsunday] last tenant of the farm of under the said .

2. Under the provisions of the Agricultural Holdings Act, 1908, the pursuer and the said C. D., being unable to agree, referred to the arbitration of the defender a claim by the pursuer for compensation for improvements effected on the said farm during the currency of pursuer's lease.

3. During the course of said arbitration there has arisen the

important question of law relating to such compensation stated in the crave hereof.

4. The defender, as arbiter foresaid, refuses to state said question of law for the opinion of the Court, and the present application has therefore become necessary.

PLEA IN LAW.

The defender, as arbiter foresaid, being bound to state the question of law recited in the crave hereof for the opinion of the Court, decree should be granted as craved, with expenses.

2. To Declare Legatee Entitled to Lease (s. 19).

Sheriffdom of at .

A. B. [*designation*], as legatee under the trust-disposition of X. Y. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For decree declaring that, as legatee under the trust-disposition and settlement, dated , of the deceased X. Y. [*designation*], lessor of the farm of from defender under lease dated , pursuer is now tenant under said lease as from the date of the death of the said deceased X. Y.

Therefore the pursuer craves the Court—

To grant a decree declaring, in terms of sec. 19 (*e*) of the Agricultural Holdings Act, 1908, that pursuer as legatee under the said trust-disposition and settlement of the said X. Y. is now tenant under the said lease of the said farm, as and from the date of the death of the said X. Y., and in the event of defender appearing and objecting to the prayer hereof to find him liable in expenses.

CONDESCENDENCE.

1. The said X. Y., under lease dated , was tenant of the farm of , of which defender is proprietor.

2. By trust-disposition and settlement dated the deceased X. Y., who died on , bequeathed to the pursuer his lease of said farm.

3. The said testamentary bequest was, in terms of sec. 19 (*a*) of

the Agricultural Holdings Act of 1908, duly intimated to the defender on , being within twenty-one days after the death of the said X. Y. [*or* that being the earliest date on which it was possible for pursuer to give said intimation, being unavoidably prevented from doing so earlier owing to [*state cause*]].

4. On , being within one month from the date of said intimation, the defender intimated to pursuer that he objected to receive pursuer as his tenant under the said lease.

5. The defender has no reasonable grounds for his refusal to receive pursuer as the tenant under said lease, and this application to compel him to receive pursuer as his tenant is necessary.

PLEA IN LAW.

The defender being bound, in the absence of reasonable objection, to receive pursuer as his tenant under the said lease, and no reasonable objection having been stated by defender, the pursuer is entitled to decree as craved; and, in the event of defender's appearing and opposing the prayer hereof, to expenses.

3. By Proprietor for Removal of Tenant (s. 17).

Sheriffdom of at .

A. B. [*designation*], proprietor of , *Pursuer*,

against

C. D. [*designation*], as tenant of said farm, *Defender*.

The demand of the pursuer is—

For payment to the pursuer of £50, being half-year's rent of said farm due at Whitsunday [*or* Martinmas] 19 , and now in arrear, and failing payment thereof, or caution being found therefor and for one year's rent in addition, for decree of removing and ejection in terms of sec. 17 of the Agricultural Holdings Act, 1908.

Therefore the pursuer craves the Court—

To ordain the defender to pay to the pursuer £50, with interest from Whitsunday [*or* Martinmas] 19 , and failing payment thereof or caution being found to the satisfaction of the Court within such time as the Court may appoint for the payment thereof and for £100 in addition, being one year's rent of said farm, to ordain the defender, at the term of Martinmas [*or* Whitsunday] 19 , to flit and remove himself, his family, servants, sub-tenants, cottars and dependants, with their cattle, goods and gear, furth and from the said farm of ; and

failing their removing, to grant warrant of ejection; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The defender is tenant of the said farm, under a lease dated , of which pursuer is proprietor.

2. The rent of said farm is £100, payable in equal instalments at Whitsunday and Martinmas.

3. Defender is in arrears in payment of the half-year's rent due last Whitsunday [*or* Martinmas], conform to statement herewith produced.

4. In these circumstances pursuer is entitled to decree as craved, in terms of sec. 17 of the Agricultural Holdings Act, 1908.

PLEA IN LAW.

The defender being in arrears for the half-year's rent of said farm due at Whitsunday [*or* Martinmas] last, pursuer is entitled to decree therefor, and failing payment or caution being found for the payment thereof and for payment of £100 in addition, being one year's rent, to decree of removing and ejection in terms of sec. 17 of the Agricultural Holdings Act, 1908, as craved, with expenses.

4. To Set Aside Award on Ground of Misconduct of Arbiter (Sched. 2, s. 13).

Sheriffdom of at .

A. B. [*designation*], as tenant of , *Pursuer*,

against

C. D. [*designation*], as arbiter in an arbitration between pursuer and X. Y. [*designation*], proprietor of said farm, and the said X. Y. for his interest, *Defenders*.

The demand of the pursuer is—

For a decree, in terms of Sched. 2, sec. 13, of the Agricultural Holdings Act, 1908, setting aside the award, dated , made by defender C. D., as sole arbiter in an arbitration between pursuer and defender X. Y., under the said Act for improvements effected by pursuer during his tenancy of the said farm.

Therefore the pursuer craves the Court—

To set aside the said award and to declare it to be void and of no force and effect in respect that defender C. D. misconducted

himself by accepting a bribe from the defender X. Y. [*or as the case may be*], and to find defender C. D. liable in expenses.

CONDESCENDENCE.

1. The defender C. D. was sole arbiter in an arbitration under the Agricultural Holdings Act, 1908, between pursuer and defender X. Y. in respect to improvements effected by pursuer on the farm of , of which defender X. Y. is proprietor and of which pursuer, under a lease dated , was tenant till .

2. On the defender C. D. pronounced the award complained of, a copy of which is herewith produced.

3. Pursuer avers that during the course of the said arbitration the defender C. D. misconducted himself by accepting a bribe from the defender X. Y. [*or as the case may be, giving detailed particulars of alleged misconduct*].

4. In consequence of the said misconduct of the defender C. D. pursuer is entitled to have the said award set aside, in terms of Sched. 2, sec. 13, of the Agricultural Holdings Act, 1908.

PLEA IN LAW.

The defender C. D., as sole arbiter in the arbitration between pursuer and defender X. Y., under the Agricultural Holdings Act, 1908, having during the course of said arbitration misconducted himself as condescended on, pursuer is entitled to have the award pronounced by said C. D. on set aside, in terms of Sched. 2, sec. 13, of said Act, with expenses.

5. To Set Aside Award as Improperly Procured (Sched. 2, s. 13).

Sheriffdom of at .

A. B. [*as in previous form*],

against

C. D. and X. Y. [*as in previous form*].

The demand of the pursuer is—

For a decree, in terms of Sched. 2, sec. 13, of the Agricultural Holdings Act, 1908, setting aside the award, dated , made by defender C. D. as sole arbiter in an arbitration between pursuer and defender X. Y. under the said Act in respect of improvements effected by pursuer during his tenancy of said farm.

Therefore the pursuer craves the Court—

To set aside the said award and to declare it to be void and of no force and effect in respect that it was improperly procured by not having been signed by said arbiter within twenty-eight days from the date of his appointment or within the further period directed by the Board of Agriculture by order dated [*or*, and no extension of the time for signing said award having been granted by the Board of Agriculture] in terms of Sched. 2, sec. 5, of the Agricultural Holdings Act, 1908, and to find pursuer entitled to expenses.

Condescendence.

1. The defender C. D. was sole arbiter in an arbitration under the Agricultural Holdings Act, 1908, between pursuer and defender X. Y. in respect to improvements effected by pursuer on the farm of , of which defender X. Y. is proprietor and of which pursuer, under lease dated , was tenant till .

2. On the defender signed and issued the award complained of, days from the date of his appointment.

3. In terms of Sched. 2, sec. 5, of the said Act C. D. was bound to sign and issue his award within twenty-eight days of his appointment, unless an extension of that period was sanctioned by the Board of Agriculture.

4. No extension of the period within which the award required to be signed and issued was granted by the Board of Agriculture.

5. The said award was, in the circumstances condescended on, improperly procured within the meaning of Sched. 2, sec. 5, of the said Act, and the pursuer is entitled to have it set aside.

Plea in Law.

The defender C. D., as sole arbiter in the arbitration between pursuer and defender X. Y., under the Agricultural Holdings Act, 1908, having signed and issued the award complained of outwith the time appointed by Sched. 2, sec. 5, of said Act, and no extension of the time for so signing and issuing the award having been granted by the Board of Agriculture, the pursuer is entitled to have the said award set aside as having been improperly procured within the meaning of said Act, with expenses.

6. For Removal of Arbiter for Misconduct (Sched. 2, s. 6).

Sheriffdom of at .

A. B. [*as in Form No.* 4],

against

C. D. and X. Y. [*as in Form No.* 4].

The demand of the pursuer is—

For a decree, in terms of Sched. 2, sec. 6, of the Agricultural Holdings Act, 1908, removing the defender C. D., on the ground of misconduct, from the office of arbiter in an arbitration under said Act between pursuer and defender X. Y. with respect to improvements effected by the pursuer during his tenancy of the said farm.

Therefore the pursuer craves the Court—

To grant a decree in terms of Sched. 2, sec. 6, of the said Act, removing the said C. D. from the office of arbiter under the said arbitration on the ground of his misconduct, in respect of his refusal to admit competent evidence [*or*, to disallow incompetent evidence, or to hear the parties on the matter submitted, *or as the case may be*], and to find the pursuer entitled to expenses.

CONDESCENDENCE.

1. The defender C. D. is sole arbiter in an arbitration pending between pursuer and defender X. Y. under the Agricultural Holdings Act, 1908, in respect to improvements effected by the pursuer on the farm of , of which defender X. Y. is proprietor and of which pursuer, under lease dated , was till tenant.

2. The said C. D. on ordered a proof to be taken before him within . Said proof was duly taken on .

3. In the course of said proof the defender C. D. refused to hear the evidence of who was tendered as a witness for pursuer [*or, as the case may be, stating particulars of alleged misconduct*].

4. The said refusal was misconduct on the part of C. D. within the meaning of Sched. 2, sec. 6, of the said Act, and the pursuer is therefore entitled to have defender C. D. removed from the office of arbiter in said arbitration.

PLEA IN LAW.

The defender C. D., as sole arbiter in the arbitration pending between pursuer and the defender X. Y. under the Agricultural Holdings Act, 1908, having misconducted himself within the meaning

of Sched. 2, sec. 6, of the said Act as condescended on, the pursuer is entitled to decree removing said C. D. from his office of arbiter in said arbitration, as craved, with expenses.

Aliment.—*See also* ADHERENCE AND ALIMENT; SEPARATION AND ALIMENT.

1. By Wife against Husband for Arrears Due under Contract of Separation.

Sheriffdom of at .

A. B., residing at , wife of defender, *Pursuer*,

against

C. B. [*designation*], formerly residing at , now at , husband of pursuer, *Defender*.

The claim of the pursuer is—

For payment of £50, conform to account hereto attached, as arrears of aliment due to pursuer by defender under contract of separation entered into between them, dated , with interest and expenses.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £50, with interest from and expenses; [and to grant warrant, &c.].

CONDESCENDENCE.

1. The pursuer and defender were married at , on the . An extract of said marriage is herewith produced.

2. The pursuer and defender after the marriage cohabited together as husband and wife at till .

3. On said date they voluntarily agreed to live separate, and entered into a contract of separation and aliment dated .

4. By said contract it was mutually agreed that pursuer and defender should continue to live separate, and that defender should pay to pursuer the sum of £50 yearly as aliment, said sum being payable in advance by quarterly instalments as at 1st January, 1st April, 1st July, and 1st October in each year, by defender paying said instalments into an account opened in pursuer's name with the branch of the Bank of Scotland at .

5. Said quarterly instalments were duly paid by defender for two years, the last instalment being paid on .

6. Since said date defender has failed to pay the instalments due,

and is therefore due to pursuer four quarterly instalments amounting to the sum concluded for.

7. The place of payment of said instalments, or *locus solutionis* of said contract, is situated within the jurisdiction of the Court.

8. The defender has been personally cited within said jurisdiction.

PLEA IN LAW.

The defender, having by contract entered into between him and pursuer, dated , agreed to pay pursuer the sum of £50 yearly by four equal quarterly instalments, and being in arrears with four such instalments as condescended on, decree as craved should be granted, with interest and expenses.

2. By Wife against Husband, not under Contract.

Sheriffdom of at .

A. B. [*as in previous form*],

against

C. B. [*as in previous form*].

The claim of the pursuer is—

For payment by the defender of £100 yearly as aliment for herself and two children, aged five and three respectively.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £100 yearly, in name of aliment, being £60 for herself and £20 for each of the two children of the marriage between pursuer and defender, John aged five, and Mary aged three, so long as defender shall refuse to maintain her and them, said sum to be payable by monthly instalments in advance, with interest on each monthly instalment from its date, and to find defender liable in expenses.

CONDESCENDENCE.

1. The pursuer and defender were married at on the . An extract of said marriage is herewith produced. Two children were born of the marriage, John, born , and Mary, born .

2. Pursuer and defender cohabited and lived happily together as husband and wife at till .

3. On that date defender left the house and deserted the pursuer. He now resides at .

4. Since defender left the house he has not contributed to the support of the pursuer or his two children, who continue to live with pursuer at aforesaid.

5. The defender has been repeatedly called upon to provide for the pursuer, but he neglects or refuses to do so.

6. Pursuer is unable to maintain herself or the two children of the marriage.

PLEA IN LAW.

The defender, being bound to maintain and aliment pursuer and the children of the marriage between him and pursuer, and the sum craved being reasonable and necessary for their support in name of aliment, decree as craved should be granted, with expenses.

3. By Wife against Husband, on Ground of Desertion.

Sheriffdom of at .

A. B. [*as in previous form*],
against
C. B. [*as in previous form*].

The claim of the pursuer is—

For payment by the defender of £50 in name of aliment to pursuer.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £50 yearly in name of aliment, payable in four equal quarterly instalments, with interest on each quarterly instalment from its date, so long as defender refuses to receive and maintain pursuer as his wife, with expenses.

CONDESCENDENCE.

1. The pursuer and defender were married at on . An extract of said marriage is herewith produced. There are no children of the marriage.

2. After marriage pursuer and defender cohabited and lived together as husband and wife at .

3. On defender left the house and disappeared, and since that date till within a few weeks of the raising of this action pursuer was unaware of his whereabouts.

4. Since defender disappeared he has contributed nothing to pur-

suer's support, and he now refuses to do so or to receive pursuer as his wife.

5. Defender is in constant employment as at , earns good wages, and is well able to contribute to pursuer's support.

PLEA IN LAW.

The defender being bound to maintain and aliment the pursuer, and to receive her as his wife, and the amount claimed being reasonable and necessary in name of aliment, pursuer is entitled to decree as craved, with expenses.

4. By Mother of Illegitimate Child for Affiliation and Aliment.

Sheriffdom of at .

A. B., residing at , mother of defender's illegitimate male child, *Pursuer*,

against

C. D. [*designation*], father of said child, *Defender*.

The claim of the pursuer is—

For declarator that defender is the father of an illegitimate male child of which pursuer was delivered on , and for payment by defender of £2 as inlying expenses and £8 yearly as aliment of said child.

Therefore the pursuer craves the Court—

To declare that defender is the father of an illegitimate male child of which pursuer was delivered at on , and to grant a decree against defender for payment to pursuer of £2 in name of inlying expenses and £8 yearly, payable in advance in equal quarterly instalments, with interest on each quarterly instalment from its date, in name of aliment for said child, from the said date till he attains the age of seven or is able to support himself, with expenses.

CONDESCENDENCE.

1. Pursuer and defender became acquainted in the month of , and subsequent to that date defender sought pursuer's company and took her frequent walks.

2. On the evening of a dance was given in the Hall, at which pursuer and defender were both present. Defender paid marked attention to pursuer, danced with her six times, and asked leave to see her home, which he did. Pursuer's home is situated about two

miles from said hall. Defender urged pursuer to go home by an unfrequented path, to which, as the night was fine, pursuer consented. The road chosen by defender was up the Lane, across the field at the end thereof, and down by the side of the plantation leading to pursuer's home.

3. While in the said field, and at the corner near the plantation, defender said he was tired, and asked pursuer to sit down for a little, which she did. While seated there James Brown, labourer, residing at , passed them, along with a girl named Agnes Smith, whom pursuer knew. Brown and Smith stood a minute or two and chatted. They asked pursuer if she was not going home, and defender replied that as the night was fine and he was tired he did not intend to go home yet. Smith noticed that defender had his arm round pursuer's waist, and she remarked, "You two look like sweethearts." Defender replied that pursuer was "his best girl," and asked Smith if she would "come to the wedding."

4. After Brown and Smith left defender kissed pursuer repeatedly and called her endearing names. Yielding to repeated solicitations and advances on defender's part, and to his repeated assurances that no harm would come to pursuer, she allowed him to have carnal connection with her.

5. In the course of the following month pursuer and defender had frequent walks together, and defender frequently had carnal connection with pursuer. In particular [*specify occasions, with full details, and the names of any witnesses who can be called to corroborate pursuer's statements*].

6. In consequence of said carnal connection pursuer became pregnant, and on she was delivered of a male child, of which defender is the father.

7. Pursuer first became aware of her pregnancy on (owing to violent morning sickness which persisted for six weeks). One morning, about the , pursuer's mother asked her what was wrong with her and whether she was not pregnant. Pursuer admitted that she was, and said defender was the father.

8. Pursuer wrote defender on the informing him of her condition, and asked him what he intended to do. To that letter she received no reply.

9. About a week later pursuer heard that defender had left the town and gone to . Pursuer got defender's address from his sister, and on wrote him again in terms similar to her last letter. She also informed him that unless he undertook to make some provision for the child it would become necessary for her

to consult an agent. Defender, in reply, wrote the letter produced dated .

10. Defender has refused to acknowledge the paternity of the said child, or to pay the pursuer's inlying expenses, or to contribute in any way towards said child's support.

11. Defender is in constant employment as a joiner in the employment of Messrs. , and is well able to contribute to said child's support.

PLEA IN LAW.

The defender being the father of pursuer's child, and being bound to contribute for its aliment and her inlying expenses, and the sum craved being fair and reasonable, the pursuer is entitled to decree as craved, with expenses.

NOTE.—*The sum allowed for aliment varies in different sheriffdoms, and the amount to be sued for is determined by local practice.*

The periods during which aliment is concluded for are usually seven years in the case of males and ten years in the case of females. Suggestions have been made that the periods might be extended to twelve and fourteen years respectively, but as the father is entitled to relieve himself of the burden by taking the child himself when, if a boy, it reaches seven, and if a girl, it reaches ten, it is better that the demand in the original action should be limited to these periods.

5. By Child against Parent.

Sheriffdom of at .

A. B., residing at , son [*or* daughter] of defender, *Pursuer*,

against

C. D. [*designation*], pursuer's father, *Defender*.

The claim of the pursuer is—

For payment of £50 yearly in name of aliment, payable in advance in equal quarterly instalments, with interest on each quarter's instalment from its date.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £50 yearly, in name of aliment, payable in advance in equal quarterly instalments, with interest on each quarter's instalment from its date, so long as defender shall refuse to receive and maintain pursuer, with expenses.

CONDESCENDENCE.

1. Pursuer is years of age. For the last two years pursuer has been in very delicate health, owing to a serious accident which he sustained on [*or as the case may be*].

2. Owing to his state of health and bodily infirmity, pursuer is wholly unable to earn his livelihood, and is practically destitute.

3. Defender refuses to receive pursuer into his house, or to provide for his maintenance and clothing.

4. Defender is a , and is well able to afford the sum craved as aliment. There is only one daughter resident in defender's house, besides defender and pursuer's mother. Pursuer avers that defender's net drawings from said business average £6 per week.

PLEA IN LAW.

The pursuer being the defender's son, and being unable through bodily infirmity to support himself, and the aliment craved being, in the circumstances condescended on, reasonable and necessary, pursuer is entitled to decree as craved, with expenses.

6. By Parent against Child.

NOTE.—*Each child is primarily liable for a sufficient aliment, but it is only exigible out of excess income; so that where the children or one or more of them are in poor circumstances, it may be desirable to limit the sum concluded for against each individual child. In the style, an equal sum is claimed from each child, but there is no reason why the amounts should not vary according to the circumstances of each, even omitting any who, it is certain, have no superfluous income. All the children, however, should be called.*

Sheriffdom of at .

A. B., residing at , defender's father, *Pursuer*,

against

C. B. [*designation*], pursuer's son, *Defender*.

The claim of the pursuer is—

For payment by defender of £50 yearly in name of aliment, payable in advance in equal quarterly instalments, with interest on each quarter's instalment from its date.

Therefore the pursuer craves the Court—

To grant a decree against the defender [*or* defenders jointly and severally], for payment to the pursuer of £50 yearly, in name of aliment, payable in advance by equal quarterly instalments,

with interest on each quarter's instalment from its date, with expenses.

CONDESCENDENCE.

1. The pursuer, who is years of age, has, by reason of his advanced age and increasing bodily infirmity, been unable to support himself and his wife, who is years of age, for the last two years.

2. The defender [*or* defenders], who is the only son [*or* who are the sons] of the defender, is aged [*or* are aged respectively], and is employed as [*or* are respectively employed as] , and is in receipt of good wages, which the pursuer avers average £5 per week [*or* are in receipt of wages which the pursuer avers average in the case of , £ per week; in the case of , £ per week; and in the case of , £ per week].

3. The defender is unmarried [*or* defenders are unmarried, *or as the case may be*], and though well able to do so, refuses [*or* refuse] to contribute to pursuer's maintenance.

PLEA IN LAW.

The pursuer being the defender's father, and being from advanced age and bodily infirmity unable to maintain himself, and the aliment craved being, in the circumstances, reasonable and necessary, pursuer is entitled to decree, with expenses, as craved.

7. For Recall of Alimentary Decree.

(*See also* SUSPENSION.)

Sheriffdom of at .

A. B. [*designation*], defender's father, *Pursuer*,

against

C. B. [*designation*], his son, *Defender*.

The demand of the pursuer is—

For recall of a decree of this Court dated .

Therefore the pursuer craves the Court—

To find that the pursuer is no longer bound to aliment the defender, and that he is not liable in payment of aliment to the defender from and after the date hereof under a decree obtained by the defender against the pursuer in this Court on : To interdict the defender from enforcing said decree in any way after the date hereof; and to grant interim interdict, and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer, who is years of age, is a [*trade or profession*], and is the father of the defender. The defender, who is a son of the pursuer, is [*trade or profession*].

2. On or about the defender brought an action in the Sheriff Court of at against the pursuer, in which action decree was pronounced on , ordaining the present pursuer to pay aliment to the defender at the rate of .

3. At the time when the said decree was pronounced the defender was years of age, and was serving his time as an apprentice in a foundry. The defender is now years of age. He has completed his apprenticeship, and is capable of earning a wage of not less than as a journeyman mechanic.

4. In spite of the fact that he is now able to support himself, the defender will not agree not to enforce the said decree, and the present action has thus been rendered necessary.

PLEAS IN LAW.

1. The defender being able to support himself, the pursuer is no longer bound to support him.

2. The pursuer being entitled to be relieved from said decree, the defender ought to be interdicted from enforcing the same.

If the action is founded on a change in the pursuer's circumstances, the third article will narrate the facts on which the demand for recall is based—e.g.:

At the time when said decree was pronounced the pursuer was carrying on business as a in . He has been of late unfortunate in business, and on or about his estates were sequestrated. The pursuer has again started business as a in , but he is not now able to earn more than about £ per annum, which is not more than sufficient to support the pursuer and his wife.

And the first plea will be—

1. The pursuer being no longer in a position to pay aliment to the defender, he is entitled to be relieved of the decree ordaining him to pay the same.

8. For Restriction of Alimentary Decree.

(*See also* SUSPENSION.)

To restrict the aliment to be paid to the defender by the pursuer under a decree obtained by the defender against him in this Court

on to the sum of per week: To find that the pursuer is bound to pay aliment to the defender under said decree only at said restricted rate as from ; and to find the defender liable in expenses in the event of his opposition to this application.

NOTE.—*The condescendence annexed to the previous form can easily be adapted to this one, and therefore a separate condescendence is not given.*

9. For Imprisonment of Debtor.

NOTE.—*Under the Civil Imprisonment (Scotland) Act*, 1882 (45 & 46 *Vict. c.* 42), *secs.* 3 *and* 4, *it is still competent to enforce payment of sums decerned for aliment by means of imprisonment. The procedure is by petition, addressed to the Sheriff, and is regulated by sec.* 4 *of the said Act. Sums decerned for aliment include not merely the current term of aliment, but also all arrears* (*Cain* v. *M'Cohn*, 19 *R.* 813), *inlying expenses, and expenses of process* (*Cheyne* v. *M'Gungle*, 22 *D.* 1490), *but repayment of sums expended by the parochial authority on the maintenance of a father cannot be enforced against his son in this way* (*Tevendale* v. *Duncan*, 10 *R.* 852). *Reference may also be made to the case of Strain*, 13 *R.* 1029, *as to the procedure in such cases.*

(a) *For Imprisonment of Debtor.*

To grant warrant to officers of Court to apprehend the defender [*name*] and commit him to the prison of , or other prison competent for the imprisonment of civil debtors, therein to be detained for a period not exceeding six weeks from the date of his imprisonment, or till he pay to the pursuer (*first*) the sum of £ sterling, with interest thereon at £5 per centum per annum from until payment; and (*second*) the sum of £ sterling, with interest at the rate foresaid from until payment, or such instalment or instalments of the said sums as the Court may appoint, or until the pursuer is otherwise satisfied.

1. The defender is justly indebted and resting-owing to the pursuer —(*first*) the sum of £2, 2s. sterling, being the inlying expenses attending the birth of a male illegitimate child, of which the pursuer was delivered on [*date*], of which child the defender is the father; (*second*) the sum of £ , being the expenses of process as taxed; and (*third*) the sum of , being the expense of extracting and recording the decree, all conform to decree by the Sheriff of , dated . The defender is also due the pursuer the further

sum of £ , being arrears of the aliment decerned for in said decree.

2. On or about the defender was duly charged to make payment of said inlying expenses, expenses, and arrears of aliment, but although the days of charge have expired he has failed to make payment of said sums or any part thereof.

3. The defender has, since the commencement of the action in which said decree was pronounced, possessed or been able to earn the means of paying said sums, and his failure to pay the same has been wilful.

PLEA IN LAW.

The defender having wilfully failed to pay the sums specified in the condescendence, decree of imprisonment should be pronounced as craved.

(b) *Minute for Imprisonment of Debtor.*

Where the original process is still available, warrant to imprison may be got by means of a minute in that process. The minute will be in the following form. The minute may be endorsed upon the extract :—

A. for the pursuer stated that the defender, though duly charged on to pay to the pursuer the sums of (1) £2, 2s. of inlying expenses, with interest from [*date of birth*]; (2) £ of aliment, with interest from the said ; (3) £ of aliment, with interest from ; and (4) £ of expenses in terms of the decrees pronounced by the Court on [*dates of interlocutors decerning for aliment and expenses*], had failed to pay any part of said sums, and he now craved the Court to grant warrant for the imprisonment of the defender, in terms of the Civil Imprisonment (Scotland) Act, 1882.

(c) *Minute for Reimprisonment.*

Under the Civil Imprisonment Act it is competent to reimprison the defender at intervals of not less than six months for non-payment of sums for which he has already been committed to gaol. Where it is desired to imprison the defender for the same sums, the application may be made in the original petition for imprisonment by a minute in the following form :—

A. for the pursuer stated that in terms of the foregoing warrant, dated , the defender was on apprehended and committed to prison, but that no part of the sums of aliment and expenses of process decerned for against him on had been paid to the pursuer; and he accordingly now craved on her behalf

that warrant be granted of new for the imprisonment of the defender, in terms of the Civil Imprisonment (Scotland) Act, 1882.

Altius non tolendi, for Declarator of Obligation.—*See* DECLARATOR, No. 14.

Amendment.—*See* MINUTE.

Annuity, for Valuation of.—*See* BANKRUPTCY, No. 13.

Appeal. *See* APPENDIX.

Apprehension, Damages for Illegal. — *See* REPARATION, No. 2.

Apprentice, for Implement of Indenture.—*See* IMPLEMENT, No. 6.

Arbitration.—*See also* AGRICULTURAL HOLDINGS ACT.

1. For Appointment of Arbiter under a Contract.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For the appointment of an arbiter, to be nominated by the Court, in terms of a contract entered into between the pursuer and defender, dated .

Therefore the pursuer craves the Court—

To nominate an arbiter to settle a dispute which has arisen between the parties with reference to said contract, and to find defender liable in expenses.

CONDESCENDENCE.

1. The pursuer and defender entered into a contract, dated , for [*state shortly nature of contract*].

2. By said contract it was provided, *inter alia*, that any dispute which should arise out of or in relation to the said contract should be referred to the amicable decision of an arbiter to be mutually chosen by the parties, or, in the event of their disagreement, by the Court [*or* the Sheriff of], [*or* should be submitted to arbitration in accordance with the practice of merchants in].

3. The pursuer and defender have failed to agree in the choice of an arbiter, and the pursuer is therefore compelled to institute the present action for the appointment of an arbiter by the Court [*or* by said practice, references are made to two arbiters, one chosen by each of the parties, and an oversman selected by the arbiters before they proceed to arbitration.

4. The pursuer on intimated to defender that he had appointed X. Y. [*designation*] to be his arbiter, and called on defender within seven days to nominate an arbiter to act on his behalf.

5. Defender has allowed the said seven days to lapse without appointing an arbiter, and the present application is therefore necessary.

PLEA IN LAW.

The defender having agreed to refer all disputes under said contract to the amicable decision of an arbiter to be mutually chosen by him and pursuer, or, failing their agreement in their choice of an arbiter, to an arbiter to be nominated by the Court, and a dispute having arisen between pursuer and defender with reference to said contract, and they having failed to agree upon the choice of an arbiter, pursuer is entitled to decree as craved, with expenses.

2. To Appoint Oversman.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], and E. F. [*designation*], arbiters in an arbitration between pursuer and X. Y. [*designation*], and the said X. Y. for his interest, *Defenders*.

The demand of the pursuer is—

For the appointment of an oversman, in terms of the arbitration clause of a contract, dated , between pursuer and defender X. Y., under which the defenders C. D. and E. F. are the arbiters nominated respectively by pursuer and defender X. Y.

Therefore the pursuer craves the Court—

To nominate an oversman to act in the arbitration between pursuer and defender under the contract between them, dated , and to find the defenders or any of them compearing and opposing liable in expenses.

CONDESCENDENCE.

1. The pursuer and defender X. Y. entered into a contract, dated , for [*state shortly nature of contract*].

2. Said contract, *inter alia*, provides that in the event of any dispute arising between the parties with reference thereto, such dispute should be referred to the amicable decision of two arbiters to be mutually chosen by the parties, said arbiters to jointly nominate an oversman to act in the event of their differing.

3. A dispute has arisen between pursuer and defender X. Y. as to [*state shortly nature of dispute*].

4. Pursuer and defender X. Y. have accordingly nominated respectively the defenders C. D. and E. F. to act as arbiters in said dispute.

5. It is the duty of the said arbiters to nominate an oversman to act in the event of their disagreeing, but though repeatedly requested to do so, they refuse or at least delay to do so.

6. To enable said arbitration to proceed, it is necessary that an oversman should be appointed, and the pursuer is therefore entitled to the decree craved.

PLEA IN LAW.

The defenders C. D. and E. F., as arbiters foresaid, having failed to nominate an oversman, as required by the terms of the arbitration clause in the said contract, the pursuer is entitled to decree, with expenses, as craved.

3. To Interpone Authority to Decree-Arbitral.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For a decree interponing authority to an award, of date , pronounced by X. Y. [*designation*] as sole arbiter acting under the arbitration clause of a contract, dated , between pursuer and defender, and for payment, in terms thereof, by the defender of £500 as principal and £50 as taxed expenses, with interest and expenses.

Therefore the pursuer craves the Court—

To interpone authority to said award and to grant a decree against the defender for payment, in terms of said award, (1) of £500 as principal, with interest from the date of said award; and (2) £50 as taxed expenses, with interest from the date of citation, with expenses.

CONDESCENDENCE.

1. By the terms of the contract, dated , entered into between pursuer and defender, it was provided that any dispute which might arise thereunder should be referred to the amicable decision of the said X. Y.

2. A dispute having arisen under said contract, said dispute was on referred to the decision of the said X. Y., who, after hearing evidence, pronounced the said award.

3. By said award the said arbiter pronounced in favour of the pursuer, and awarded him £500 to be paid by defender, with the expenses of the reference as these should be taxed. Said expenses were duly taxed by the auditor of Court at the sum of £50.

4. Pursuer has called upon defender to pay the said sums amounting together to £550, but defender refuses or at least delays to do so.

PLEA IN LAW.

The said arbiter having, in virtue of the reference made to him, issued his award ordaining the defender to pay the sums craved, and the defender having refused or delayed to do so, the pursuer is entitled to decree as craved, with expenses.

4. For Warrant to Cite Witnesses and Havers.

Sheriffdom of at .

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For a warrant to cite witnesses and havers, on pursuer's behalf, to appear before X. Y. [*designation*] as sole arbiter, under a deed of submission, dated , in an arbitration between the pursuer and C. D. [*designation*].

Therefore the pursuer craves the Court—

To grant warrant for the citation, at pursuer's instance, of witnesses and havers to appear before the said arbiter at diets fixed by him; to give evidence and produce documents; and in the event of the failure of a witness or haver to attend after citation, to grant warrant for letters of second diligence.

CONDESCENDENCE.

1. The pursuer and C. D. [*designation*] entered into a deed of submission, dated , whereby they referred all matters

in dispute between them in relation to to the amicable decision of the said X. Y.

2. The said arbiter accepted office under said deed.

3. By said deed the parties granted full power to the said arbiter to adopt such procedure as he might deem necessary.

4. On the arbiter pronounced the following deliverance:—

5. In order to carry said deliverance into effect, it is necessary that diligence should be granted as craved.

PLEA IN LAW.

The pursuer is, in terms of the said deliverance, entitled to obtain the warrant craved.

NOTE.—*Where the objection to produce is made in the interest of one of the submitters,* e.g. *where confidentiality is pleaded, in addition to calling the haver as a defender, the adverse party should also be called for any interest he may have.*

5. To Ordain Haver to Produce Documents.

NOTE.—*When a witness refuses to answer a question or a haver to produce a document in his possession, the arbiter cannot himself compel them to answer or produce. He may pronounce an order ordaining the recalcitrant party to answer or produce, and if he still remains obdurate a summary application may then be presented to the Sheriff to ordain him to answer the questions put or to produce the documents called for* (*Blaikies,* 14 *D.* 590).

In the same way, either party refusing to return documents to the arbitration process when called upon, can be compelled by summary application to the Sheriff to do so.

Sheriffdom of at .

A. B. [*designation*], *Pursuer,*
against
C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For a decree interponing authority to an order, of date pronounced by X. Y. [*designation*] as sole arbiter in an arbitration pending between pursuer and E. F. [*designation*], [*or* defender E. F. *if he is called as a defender for his interest*], and ordaining defender to appear before said arbiter on within .

Therefore the pursuer craves the Court—

To interpone authority to the said order and to ordain the defender to appear and produce before said arbiter, in terms of said order and conform to citation and specification, on the day of or at any adjourned diet; and in the event of defender's failure to implement said order to grant warrant for letters of second diligence, and to find the defender liable in expenses.

Condescendence.

1. The pursuer and E. F. [*designation*] entered into a deed of submission, dated , whereby they referred all matters in dispute between them in relation to to the amicable decision of the said X. Y.

2. The said X. Y. duly accepted the office of arbiter under said deed of submission.

3. By the said deed full power was granted by the parties to the said arbiter to adopt such procedure with reference to said arbitration as he might think necessary or expedient.

4. On the the said arbiter allowed parties a proof of their averments and pronounced the following deliverance:—

5. Thereafter the pursuer lodged in the arbitration process a specification of the books, documents, and writings which pursuer required the defender to produce at said diet of proof. Said specification was submitted to and approved of by said arbiter, who recommended that warrant should be granted to cite havers to produce the documents falling thereunder. Warrant to cite was accordingly granted on , and served upon the defender on .

6. At the said diet of proof the defender duly appeared, but, although directed by the said arbiter to do so, refused to produce the documents called for in said specification.

7. By deliverance dated the said arbiter, having considered defender's objection, and being of opinion that it was unfounded, ordered the defender to produce the following documents [*or* the documents called for in said specification], but the defender refuses to do so.

Plea in Law.

The defender having refused to produce the documents ordered by the said arbiter, the pursuer is entitled to decree as craved, with expenses.

6. To Compel Witness to Answer Questions.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], and E. F. [*designation*], for his interest, *Defenders.*

The demand of the pursuer is—

For a decree interponing authority to an order, of date , pronounced by X. Y. [*designation*] as sole arbiter in the submission pending between the pursuer and E. F. [*designation*] [*or* the defender E. F. *if he is called as defender for his interest*], and ordaining the said C. D. to answer the said question and all others necessary and relevant.

Therefore the pursuer craves the Court—

To interpone authority to said order and ordain the defender to appear and answer, in terms of said order, the said question and all others relevant to the matter submitted to the said arbiter; and in the event of the defender's refusal, to grant warrant for letters of second diligence, and to find the defender [*or* defenders] liable in expenses.

CONDESCENDENCE.

1. The pursuer and the said E. F., by deed of submission dated , submitted certain questions pending between them to the decision of the said X. Y.

2. By minute, dated , the said X. Y. accepted the office of arbiter thereby conferred.

3. The said X. Y. ordered a proof to be led before him on , and the defender C. D. was duly cited thereto, and attended.

4. In the course of his examination the said C. D. was asked the following question:—

which question he declined to answer.

5. The said arbiter ordered the said C. D. to answer said question, but on his declining to do so, thereupon pronounced the following order:—

6. Notwithstanding said order, C. D. still persists in declining to answer said question, and the authority of the Court is necessary to compel him.

PLEA IN LAW.

The defender C. D. being bound, in accordance with the terms of said order, to answer said question and all others relevant to the matter in dispute, the pursuer is entitled to decree as craved, with expenses.

7. To Compel Party to Return Documents.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For a decree interponing authority to an order, of date , pronounced by X. Y. as sole arbiter in a submission pending between pursuer and defender, and ordaining defender forthwith to return documents Nos. to of process in said reference.

Therefore the pursuer craves the Court—

To interpone authority to said order and ordain defender forthwith to return to the clerk of said reference the following documents, namely [*state documents wanted*], being Nos. to of process in said reference, and failing defender's failure to do so within eight days, to grant warrant for letters of second diligence, and to find defender liable in expenses.

CONDESCENDENCE.

1. The pursuer and defender, by deed of submission dated , referred certain matters in dispute to the decision of E. F. [*designation*] as sole arbiter, who accepted the office thereby conferred.

2. In the course of said submission the pursuer produced and lodged with the clerk to the reference the documents mentioned in the crave.

3. The defender on borrowed said documents, on a receipt No. of process.

4. The pursuer requires said documents, and has repeatedly requested defender to return them, but the defender refuses or delays to do so.

5. On the arbiter pronounced the following order:—

6. Notwithstanding said order, the defender delays to return the documents, and the authority of the Court is necessary to compel him.

PLEA IN LAW.

The defender being bound, in accordance with said order, to return the documents therein mentioned, and not having done so, pursuer is entitled to decree as craved, with expenses.

Arrangement, Deed of.—*See* BANKRUPTCY, No.18.

Arrest, Damages for.—*See* REPARATION, No. 2.

Arrestment.—*See also* DISMANTLING AND SALE; SELL, WARRANT TO; SHIPPING; WARRANT.

1. For Letters of, Jurisdictionis Fundandæ Causa.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For letters of arrestment of defender's moveable property within the jurisdiction *jurisdictionis fundandæ causa.*

Therefore the pursuer craves the Court—

To grant warrant for letters of arrestment *jurisdictionis fundandæ causa* authorising the arrestment of goods, debts, money or other moveable property of defender within the jurisdiction of the Court, to remain under arrestment *jurisdictionis fundandæ causa* at pursuer's instance.

CONDESCENDENCE.

1. The defender is due pursuer £50 for goods supplied conform to account herewith produced [*or* the pursuer has supplied goods to defender as per account herewith produced, to the value of £185. Of that amount defender has paid £135 to account, leaving a balance due of £50, the sum craved].

2. The defender is a domiciled Englishman [*or* a foreigner] and neither resides nor carries on business in Scotland.

3. The defender has moveable property within the jurisdiction of the Court, consisting of , which he intends to withdraw therefrom.

PLEA IN LAW.

The defender, being indebted to pursuer, and neither residing or carrying on business in Scotland, pursuer is entitled to obtain the warrant craved.

2. Arrestment of Ship Juris. Fund. Causa.

Sheriffdom of at .

A. B. & Co., Engineers and Shipbuilders, Glasgow, *Pursuers*,

against

C. D., master, and as such representing the owners of the s.s. *X.* of Y., France, presently lying in the harbour of Greenock, *Defender*.

The demand of the pursuers is—

For warrant to arrest said ship *jurisdictionis fundandæ causa* in respect of an account for repairs executed by pursuer on said ship to defender's order.

Therefore the pursuer craves the Court—

To grant warrant for letters of arrestment *jurisdictionis fundandæ causa* authorising arrestment of ships or vessels belonging to defender within the jurisdiction of the Court to remain under arrestment *jurisdictionis fundandæ causa* at pursuers' instance.

CONDESCENDENCE.

1. The pursuers during the months of March and April 19 executed repairs on the said ship upon the orders and employment of the defender, conform to account, amounting to £ , herewith produced.

2. The defender is a foreigner, and has no domicile in Scotland; but he is master [and owner, or part owner] of the said ship *X.* of Y., now lying within the jurisdiction of the Court.

3. The pursuers are about to raise an action before the Sheriff of at for payment of the said account, but before doing so it is necessary that they should found jurisdiction in terms of sec. 6 (*c*) of the Sheriff Courts (Scotland) Act, 1907, by arresting the said vessel.

PLEA IN LAW.

The defender being a foreigner and indebted to the pursuers, they are entitled to warrant for arrestment *jurisdictionis fundandæ causa*, within the jurisdiction of the Court, of ships or vessels of which he is [owner or part owner or] master.

3. For Recall of Arrestment, used in Virtue of a Precept of Arrestment.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For recall of an arrestment used by the defender in the hands of X. Y. [*designation*].

Therefore the pursuer craves the Court—

To recall the arrestment used by the defender in the hands of X. Y. [*designation*], in virtue of a precept of arrestment granted by the Sheriff of of date , and that with or without caution; and to find the defender liable in expenses.

CONDESCENDENCE.

1. By precept of arrestment dated , granted by the Sheriff of , the defender arrested in the hands of X. Y. [*designation*] all sums of money belonging to pursuer in said arrester's hands.

2. Said precept of arrestment proceeded upon the narrative that by bill of exchange, dated , drawn by defender upon and accepted by pursuer at three months' date, the defender has ordered pursuer as such acceptor to pay to the defender or his order the sum of £50.

3. The signature of pursuer appearing on said bill as acceptor was not adhibited by or with the authority of the pursuer.

4. The said arrestment, as proceeding upon an illegal warrant, is inept and should be recalled, at any rate upon caution.

PLEA IN LAW.

The defender having arrested pursuer's moveable effects in virtue of a precept of arrestment for which there was no legal warrant, pursuer is entitled to decree as craved, with expenses.

4. For Recall or Restriction of Arrestments used on the Dependence.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For recall of arrestments used by the defender in the hands of X. Y. [*designation*] in virtue of warrant of date .

Therefore the pursuer craves the Court—

To recall or restrict the said arrestment used by defender in the hands of X. Y. [*designation*], and obtained upon a warrant, dated , to arrest on the dependence of an action raised in this Court by pursuer against defender concluding for £500, and that with or without caution, and to find defender liable in expenses.

CONDESCENDENCE.

1. On the defender raised an action in this Court against pursuer, concluding for £500 as damages for injuries sustained by him in consequence of his having been knocked down by pursuer's motor car.

2. Said sum is a random sum, and quite out of proportion to the injuries sustained by defender, which are trifling.

3. The defender has used arrestments against pursuer on the dependence of said action to an extent and value wholly out of proportion even to the sum sued for.

4. In particular, defender has arrested in the hands of X. Y. [*designation*] a sum of £1000 [*or as the case may be*].

5. Said arrestments have been used miniously and oppressively, and with the object of concussing pursuer into a settlement on terms unduly favourable to defender.

6. Pursuer is willing to find such caution as the Court may deem reasonable for the payment of the damages and expenses, if any, that may be found due to defender in said action.

PLEA IN LAW.

The said arrestments having been used by defender miniously and oppressively, the pursuer is entitled to decree as craved, with expenses.

Or

ALTERNATIVE CONDESCENDENCE.

1. On 19 , the defender raised an action in this Court against the pursuer for the sum of £ as damages for breach of contract. The pursuer has lodged defences, in which, *inter alia*, he pleads that the action is irrelevant, and that no contract was entered into between the parties.

2. The defender has used arrestments in the hands of a large number of the pursuer's customers on the dependence of the said action. In consequence of the said arrestments, the pursuer will be seriously prejudiced through being unable to collect the accounts due to him by

the arrestees. The sums covered by the arrestments amount to several times the sum sued for.

3. The pursuer is willing to find caution for such sum as the Court may consider reasonable in the circumstances.

PLEA IN LAW.

The said arrestments being for a random sum and having been used oppressively, should be recalled as craved.

5. For General Recall of Arrestments used on the Dependence.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For recall of arrestments used by the defender in virtue of a warrant dated .

Therefore the pursuer craves the Court—

To recall the arrestments used or which may hereafter be used by defender against pursuer on the dependence of an action for damages for breach of contract pending between pursuer and defender in this Court, with or without caution, and to find the defender liable in expenses.

CONDESCENDENCE.

1. On the pursuer raised an action in this Court against pursuer for the sum of £500 as damages for breach of contract.

2. The pursuer has lodged defences to said action in which he pleads that, *inter alia*, the action is irrelevant, in respect that no contract was entered into between the parties.

3. In any event the sum claimed is a random sum, and wholly out of proportion to any sum which defender is likely to recover in said action.

4. On dependency of said action defender has used arrestments in the hands of a large number of pursuer's customers, in consequence of which pursuer is seriously hampered in his business.

5. The sums covered by said arrestments amount to several times the sum sued for.

6. The pursuer is willing to find caution for such sum as the Court may consider reasonable.

PLEA IN LAW.

The said arrestments having been used by defender miniously and oppressively, and being for a random sum, pursuer is entitled to decree as craved, with expenses.

6. For Recall of Arrestment on Ship.

Sheriffdom of at .

A., master [and owner] of the steamship *X.* of Y., presently lying in the harbour of D., *Pursuer*,

against

R. & Co. [*designation*], *Defenders.*

The demand of the pursuer is—

For recall of the arrestments of the said steamship *X.* of Y., used on 19 by defenders on the dependence of an action at their instance against pursuer.

Therefore the pursuer craves the Court—

To recall the arrestments of the said steamship *X.* of Y., used by the defenders upon the dependence of the said action, with or without caution or consignation as the Court may approve, and to prohibit and discharge any further arrestments from being used on the dependence of the said action, and to find the defenders liable in expenses.

CONDESCENDENCE.

1. The pursuer is owner and master of the steamship *X.* of Y., and the defender was mate of the said vessel until he was dismissed on or about 19 . On 19 , the defender raised an action in this Court against the pursuer for £ as damages for wrongous dismissal, and has on the dependence arrested the said ship. The pursuer has lodged defences thereto.

2. The *X.* has been chartered to load a cargo for a voyage to T., and is now lying in D. harbour with her whole cargo on board. Unless the said arrestments are recalled, so as to allow of the said vessel proceeding on her voyage immediately, large claims for delay will arise under the charter-party.

3. The said action is groundless, and the said arrestments should in the circumstances be recalled without caution or consignation. But the pursuer is willing, should the Court think it necessary, to consign or find caution for such sum as the Court may think just.

PLEA IN LAW.

The arrestment of the said ship being oppressive, should be recalled either with or without caution or consignation.

7. For Damages, &c., for Illegal Arrestment of Ship.

Sheriffdom of at .

A. B., shipowner in Drammen, Norway, owner of the s.s. *Urania* of Norway, *Pursuer*,

against

C. D., ship-carpenter, Street, Greenock, *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as loss and damages sustained by pursuer, conform to statement of account hereto attached, owing to the illegal arrestment of pursuer's said ship by defender on .

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and with expenses.

CONDESCENDENCE.

1. The pursuer's steamer *Urania* arrived from Quebec in the harbour of Glasgow on 1st December 19 . Her captain, E. F., finding that certain repairs were necessary, called on pursuer, asked him to inspect the vessel, and submit an offer for the work required to be done. The defender accordingly inspected the steamer and made a written offer for the execution of the necessary repairs, which was on 19 accepted by E. F., the master of the steamer. The defender, in pursuance of said contract, commenced work upon the steamer on 26th December 19 .

2. During the time the work under estimate was going on, the captain ordered extra work to be done, and furnishings to be supplied by the defender. These extras were as follows [*here specify extras*]. No price was fixed as to these.

3. The defender only completed the repairs of the said vessel on or about 24th January 19 ; and notwithstanding that he had rendered no account to the pursuer, and that the master of the *Urania* was ready and willing to pay, and intimated his willingness to pay, any sum which might be due to the defender, the latter, on or about the 26th January 19 , obtained letters of arrestment *ad fundandam jurisdictionem*, and, on or about 27th January 19 , unjustifiably, for the purpose of coercing the pursuer into a more favourable settlement than the defender

was justly entitled to, and recklessly, maliciously, and without probable cause, arrested pursuer's said vessel. The defender, on or about 29th January 19 , raised an action against the pursuer in the Sheriff Court, concluding for payment of the sum of £570, 6s. 10d. sterling, alleged to be the amount of his account in connection with the repairs of the said vessel, with interest from 24th January 19 till payment; and, on the same day, the defender, in virtue of a warrant to arrest and dismantle, arrested pursuer's said steamer and dismantled her.

4. The true sum falling to be credited to the defender in respect of the repairs executed by him on the said vessel did not exceed £364, 6s., or thereby.

5. On or about 26th January 19 Mr. E. F., writer in Glasgow, acting on behalf of the pursuer, wrote to the agent of the defender, intimating that his client was prepared to pay the defender whatever was justly due to him, and that if he arrested the said vessel he must abide the consequences. Again, on the 30th of the same month, and before the dismantling had proceeded to any great extent, the said Mr. E. F. wrote the defender's agent that he was prepared to consign in Court the sum of £600 until the rights and interests of parties should be adjusted. In reply, the defender, through his agent, declined to stop the dismantling unless £700 was deposited. The defender proceeded with and completed the dismantling of the said vessel, and stored the sails, rudder, &c., in Glasgow.

6. On 31st January 19 the pursuer presented to the Court a petition for the recall of said arrestments, and the Court on the same day pronounced a deliverance recalling the arrestments on consignation of £600, as offered in the said letter of the pursuer. This was immediately communicated to the defender, but it was not till 1st February 19 that he gave the pursuer the necessary authority to get the rudder, &c., and that the pursuer was enabled to proceed with the preparation of his said vessel for sea. The foresaid second arrestment and the dismantling of the said vessel were done by the defender unjustifiably, for the purpose of coercing the pursuer into a more favourable settlement for the defender than he was justly entitled to, and were kept up recklessly, maliciously, and without probable cause.

7. In consequence of the said arrestments and dismantling, and of the rudder being removed as aforesaid, the pursuer has sustained serious loss, injury, and damage, which he estimates at not less than £ , and which is detailed in the account attached to the initial writ, and referred to.

8. The defender refuses to recognise the pursuer's claims, and the present action is thus necessary.

PLEA IN LAW.

The arrestment, dismantling, and detention of the pursuer's steamer having been unwarrantable, oppressive, and malicious, and without probable cause, defender is bound to make reparation to the pursuer for the loss, injury, and damage hereby occasioned, with expenses, as craved.

Arrestment, Breach of. — *See* REPARATION, No. 3; FURTHCOMING.

Arrestment, Illegal, Damages for.—*See* DILIGENCE, ILLEGAL.

Arrestment, Warrants of.—*See* WARRANT.

Artisan.—*See* WORKMEN'S COMPENSATION ACT.

Assault, Damages for.—*See* REPARATION, No. 4.

Assessment.—*See* LANDS CLAUSES, &C., ACTS; APPEALS.

Assignation, Declarator that Absolute, is a Trust.—*See* DECLARATOR, No. 21.

Assignee, of Account.—*See* ACCOUNT, No. 6.

Assignment.—*See* BANKRUPTCY.

Auditor, for Objections to Report.—*See* ACCOUNT (TAXATION OF).

Award.—*See* AGRICULTURAL HOLDINGS ACT, 1908; ARBITRATION; BUILDING SOCIETIES; AND LANDS CLAUSES, &C., ACTS.

Baillie, for Appointment of.—*See* ELECTIONS, No. 8.

Bank Cheque.—*See* PAYMENT.

Bankruptcy.—*See also* MANDATE, OATH.

NOTE.—*There must be produced with the petition* (1) *an oath or affidavit to the verity of the debt due to the petitioning or concurring creditor;*

(2) *the account and vouchers of the debt, and, where the debtor is not petitioner,* (3) *written evidence of his notour bankruptcy. The meeting of creditors must be not earlier than six or later than twelve days from the date of the Gazette notice of sequestration having been awarded.*

1. For Sequestration, by Debtor, with Concurrence (B. A., 1856, ss. 13, 14).

Sheriffdom of at .

A. B. [*designation*], with concurrence of C. D. [*designation*], a creditor duly qualified by law, *Pursuer.*

The demand of the pursuer is—

For sequestration of his estates, under the Bankruptcy Acts.

Therefore the pursuer craves the Court—

To award sequestration of the estates which now belong or shall hereafter belong to the pursuer before the date of his discharge, to declare the same to belong to his creditors for the purposes of the Bankruptcy (Scotland) Act, 1856, and Acts explaining or amending the same, and to appoint a meeting of creditors to be held in terms of said statutes to elect a trustee or trustees in succession and to do the other acts provided by the said statutes.

CONDESCENDENCE.

1. The pursuer has, for the year preceding the date of this application, resided [*or* carried on business] at , within the county of , and is subject to the jurisdiction of the Supreme Court of Scotland.

2. The pursuer, being insolvent, is under the necessity of applying for sequestration of his estates, in terms of the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same.

3. The said C. D. is a creditor of the pursuer to the extent of £50, conform to oath, account, and vouchers [*or as the case may be*] herewith produced.

PLEA IN LAW.

The pursuer, being insolvent, and possessing the requisite statutory concurrence, is entitled to decree as craved.

2. For Sequestration, by a Company and Partners, with Concurrence.

Sheriffdom of at .

A. B. & Co. [*designation*], and C. D., residing at , E. F.,

residing at , and G. H., residing at , the individual partners thereof, as such partners, and as individuals, with concurrence of X. Y. [*designation*], a duly qualified creditor, *Pursuers.*

The demand of the pursuers is—

For sequestration, in terms of the Bankruptcy Acts, of the estates of A. B. & Co. and of C. D., E. F., and G. H., as partners of said firm, and as individuals.

Therefore the pursuers crave the Court—

To grant warrant to cite the said C. D. & Co., E. F., G. H., and I. J., to shew cause why sequestration of their respective estates should not be awarded: To direct intimation of the diet of appearance and of said warrant to be made in the *Edinburgh Gazette:* To grant diligence to recover evidence of the notour bankruptcy of the said firm and partners, and other facts necessary to be established; on resuming consideration hereof, to award sequestration of the estates which now belong or shall hereafter belong to the said firm of C. D. & Co. and of E. F., G. H., and I. J., as partners thereof, and as individuals, before the date of their respective discharges, and declare the same to belong to their respective creditors for the purposes of the Bankruptcy (Scotland) Act, 1856, and Acts explaining or amending the same, and to appoint a meeting or meetings of creditors to be held in terms of said statutes to elect a trustee, or separate trustees, on said respective estates, or trustees in succession, and to do the other acts provided by said statutes.

Condescendence.

1. The pursuers have for the year preceding the date of this application carried on business within the county of , and are subject to the jurisdiction of the Supreme Court of Scotland.

2. The pursuers, being insolvent, are under the necessity of applying for sequestration of their estates under the Bankruptcy (Scotland) Act, 1856, and Acts explaining and amending the same.

3. The said X. Y. is a creditor of pursuers to the extent of £50, conform to oath, account, and vouchers [*or as the case may be*] herewith produced.

Plea in Law.

The pursuers, being insolvent and possessing the requisite statutory concurrence, are entitled to decree as craved.

3. For Sequestration by Creditor of Living Debtor without his Concurrence, and for Appointment of Judicial Factor (B. A., 1856, ss. 13-16).

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For sequestration of the defender's estates, in terms of the Bankruptcy Acts.

Therefore the pursuer craves the Court—

To grant warrant to cite the defender to shew cause why sequestration of his estates should not be awarded: To direct intimation of the diet of appearance and of said warrant to be made in the *Edinburgh Gazette*: To grant diligence to recover evidence of the defender's notour bankruptcy or other facts necessary to be established; on resuming consideration hereof, to award sequestration of the estates which now belong or shall hereafter belong to defender before the date of his discharge: To declare the same to belong to his creditors for the purposes of the Bankruptcy (Scotland) Act, 1856, and Acts explaining or amending the same, and to appoint a meeting of creditors to be held in terms of said statutes to elect a trustee or trustees in succession, and to do the other Acts provided by said statutes. [*If the appointment of a judicial factor be desired, proceed*: And meantime to appoint a judicial factor for the preservation of the defender's estates in terms of sec. 16 of the Bankruptcy (Scotland) Act, 1856.]

CONDESCENDENCE.

1. The pursuer is a creditor of the defender for £50, conform to oath, account, and vouchers herewith produced.

2. The defender has been rendered notour bankrupt within the last four months, conform to extract decree with execution of charge thereon herewith produced.

3. For the year preceding this application the defender has resided [*or* carried on business] in the county of , and is subject to the jurisdiction of the Supreme Court of Scotland.

4. In order to realise defender's estates for behoof of his creditors, pursuer is under the necessity of applying for sequestration of defender's estates in terms of the Bankruptcy Acts.

[*If appointment of judicial factor desired, add :*

5. As defender's estates consist largely of perishable stock, the appointment of a judicial factor, in terms of sec. 16 of the Bankruptcy (Scotland) Act, 1856, is desirable in the interests of the creditors. The pursuer respectfully suggests X. Y. [*designation*].]

PLEAS IN LAW.

1. The defender being notour bankrupt, the pursuer as his duly qualified creditor is entitled to decree as craved.

[*If judicial factor desired, add :*

2. Defender's estate being perishable and likely to depreciate, a judicial factor should be appointed as craved.]

4. For Sequestration, by Creditor of Company without Consent of Company.

Sheriffdom of at .

A. B. [*designation*], a creditor to the extent required by law of defenders, *Pursuer*,

against

C. D. & Company [*designation*], and C. D. [*address*], and E. F. [*address*], the partners thereof, as such partners, and as individuals, *Defenders.*

The demand of the pursuer is—

For sequestration under the Bankruptcy Acts of the estates of C. D. & Co. and of C. D. and E. F. as such partners and individuals.

Therefore the pursuer craves the Court—

To grant warrant to cite the defenders to shew cause why sequestration of their estates should not be awarded: To direct intimation of the diet of appearance and of said warrant to be made in the *Edinburgh Gazette :* To grant diligence to recover evidence of the notour bankruptcy of the defenders and the other facts necessary to be established; on resuming consideration hereof to award sequestration of the estates which now belong or which shall hereafter belong to the said C. D. & Co. and C. D. and E. F. as partners thereof, and as individuals, before the date of their discharge, and declare the same to belong to their respective creditors for the purposes of the Bankruptcy (Scotland) Act, 1856, and Acts explaining or amending same, and to appoint meetings of creditors to be held in terms of said statutes to elect a trustee or trustees in succession or separate trustees on

said respective estates, and to do the other acts provided by said statutes.

[*If a judicial factor is desired, take in from Form No.* 3.]

CONDESCENDENCE.

1. The pursuer is a creditor of defenders for £50, conform to oath, account, and vouchers herewith produced.

2. The defenders have been rendered notour bankrupt within the last four months, conform to extract decree with execution of charge thereon herewith produced.

3. For the year preceding this application the defenders carried on business in Scotland, and the defenders C. D. and E. F. have resided [*or* the said C. D. has resided] or had a dwelling-house in Scotland within said period.

4. In order to realise the estates of defenders for behoof of their creditors the pursuer is under the necessity of applying for sequestration of their estates in terms of the Bankruptcy Acts.

[*If a judicial factor is desired, state grounds as in Form No.* 3.]

PLEAS IN LAW.

1. The defenders being notour bankrupt, the pursuer as their duly qualified creditor is entitled to decree as craved.

[*If judicial factor is desired, add:*

2. Defenders' estates being perishable and likely to depreciate, a judicial factor should be appointed as craved.]

5. For Sequestration on Descriptive Firm, by Creditor without its Consent.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

The Sanitas Clothing Company, carrying on business at , *Defenders.*

The demand of the pursuer is—

For sequestration of the defenders' estates in terms of the Bankruptcy Acts.

Therefore the pursuer craves the Court—

To grant warrant to cite defenders to shew cause why sequestration of their estates should not be awarded: To direct intimation of the diet of appearance and of said warrant to be made in the *Edinburgh Gazette:* To grant diligence to recover evidence of defenders' notour bankruptcy and other facts necessary to be

established; on resuming consideration hereof to award sequestration of the estates which now belong or which shall hereafter belong to the defenders before the date of their discharge, and declare the same to belong to their creditors for the purposes of the Bankruptcy (Scotland) Act, 1856, and Acts explaining or amending the same, and to appoint a meeting of creditors to be held in terms of said statutes to elect a trustee or trustees in succession, and to do the other acts provided by said statutes.

[*If judicial factor desired, take in from Form No.* 3.]

CONDESCENDENCE.

1. The pursuer is a creditor of defenders for £50, conform to oath, account, and vouchers herewith produced.

2. The defenders' firm, the individual partners of which are unknown to pursuer, has been rendered notour bankrupt within the last four months, conform to extract decree with execution of charge thereon herewith produced.

3. For the year preceding this application the defenders have carried on business within the county of and are subject to the jurisdiction of the Supreme Court of Scotland.

4. In order to realise the estates of defenders for behoof of their creditors, the pursuer is under the necessity of applying for sequestration of their estates in terms of the Bankruptcy Acts.

[*If judicial factor desired, take in from Form No.* 3.]

PLEA IN LAW.

The defenders being notour bankrupt, the pursuer as their duly qualified creditor is entitled to decree as craved.

[*If judicial factor desired, take in from previous form.*]

6. For Sequestration of Deceased Debtor, by Mandatory.

NOTE.—*Sequestration of the estates of a deceased debtor, who at the time of his death was subject to the jurisdiction of the Supreme Courts of Scotland, may be awarded*—(a) *On the petition of a mandatory to whom he had granted a mandate to apply for sequestration; and* (b) *on the petition of a creditor or creditors, qualified as provided for in sec.* 14 *of the Act of* 1856.

When the application is at the instance of a mandatory, it is thought that the petition may be presented at any time after the debtor's death, and sequestration forthwith awarded. A petition at the instance of a creditor may be presented at any time, but no sequestration will be awarded until

the expiration of six months from the debtor's death, unless he was at the time of his death notour bankrupt, or unless his successors concur in the petition or renounce the succession, in which several cases sequestration may forthwith be awarded. Neither insolvency nor notour bankruptcy is necessary unless sequestration is wanted forthwith.

Sequestration in the case of a deceased debtor may be awarded by the Court of Session or by the Sheriff of the county in which the debtor for the year preceding his death had resided or carried on business (*Act* 1857, *sec.* 2).

Sheriffdom of at .

A. B. [*designation*], mandatory of the deceased C. D. [*designation*], *Pursuer.*

The demand of the pursuer is—

For sequestration of the estates of the deceased C. D. in terms of the Bankruptcy Acts.

Therefore the pursuer craves the Court—

To award sequestration of the estates of the said deceased C. D. which belonged to him at the time of his death, and to declare the same to belong to his creditors [*&c., as in Form No.* 1].

CONDESCENDENCE.

1. The said C. D., who died on , for the year preceding his decease resided [*or* carried on business] at in the county of , and was at said date subject to the jurisdiction of the Supreme Court of Scotland.

2. The said C. D. granted a mandate, herewith produced, in favour of pursuer for the sequestration of his estates in terms of the Bankruptcy Acts.

3. The pursuer makes the present application in conformity with said mandate.

PLEA IN LAW.

The pursuer, as mandatory of the deceased C. D., is entitled to decree as craved.

7. For Sequestration of Deceased Debtor, by Creditor.

Sheriffdom of at .

A. B. [*designation*], a duly qualified creditor of the deceased C. D. [*designation*], [with the concurrence of E. D. [*designation*], only

child and successor of the said C. D. [*or as the case may be*]], *Pursuer*,

[against

E. D. [*designation*], only child and successor of the said C. D., *Defender*].

The demand of the pursuer is—

For sequestration of the estates of the said C. D. in terms of the Bankruptcy Acts.

Therefore the pursuer craves the Court—

To grant warrant to cite defender to shew cause why sequestration should not be awarded of the estates of the deceased E. F.: To direct intimation of the diet of appearance and of said warrant to be made in the *Edinburgh Gazette*; [*where notour bankruptcy is averred, say:*] To grant diligence to recover evidence of the said C. D.'s notour bankruptcy or other facts necessary to be established;] on resuming consideration hereof, [*where the successors concur or renounce, omit preceding part and commence crave here*] to award sequestration of the estates of the said deceased C. D. and declare the same to belong to his creditors for the purposes of the Bankruptcy (Scotland) Act, 1856, and Acts explaining or amending the same: To appoint a meeting of creditors to be held in terms of said statutes to elect a trustee or trustees in succession, and to do the other acts provided by the said statutes; and to ordain the defender or any other person who has made up a title to or is in possession of any property of the said deceased C. D. to convey the same, so far as liable for his debts, to the trustee to be elected; [and to find defender liable in expenses in the event of his opposing this application].

CONDESCENDENCE.

1. The said C. D., who died at on the , was, at the date of his death, subject to the jurisdiction of the Supreme Court of Scotland.

2. The pursuer was a creditor of said C. D. at the date of his death to the extent of £50, conform to oath, account, and relative vouchers herewith produced.

3. The said E. D., son of the deceased C. D., is his only known successor and representative, and he declines to make up a title to deceased's estates or take anything to do with the management thereof.

[*If sequestration is to be forthwith awarded, add*:

4. The said C. D. was at the date of his death notour bankrupt; *or*

the said E. D. concurs in his application; *or* the said E. D. renounces the succession of the said C. D.]

5. The said C. D. at the date of his death resided [*or* had a dwelling-house, *or* carried on business] in and was then owner of estates in Scotland, as deponed to in the oath herewith produced.

6. In order to realise the estates of the said C. D. for behoof of his creditors, the pursuer is under the necessity of applying to the Court for sequestration of his estates in terms of the Bankruptcy Acts.

PLEA IN LAW.

The pursuer being a duly qualified creditor of the deceased C. D. is entitled to decree as craved.

8. Minute by Creditor to be Sisted in Room of Another in Petition for Sequestration.

NOTE.—*Under sec.* 34 *of the* 1856 *Act, where the petitioning or concurring creditor withdraws or dies before the trustee is in the saddle, any other creditor may sist himself in his place and carry on the proceedings.*

Minute for A. B. [*designation*], in petition at the instance of C. R. [*designation*], for sequestration of the estates of B. D. [*designation*].

In this petition the Sheriff of the county of pronounced a deliverance on the day of . [*Quote deliverance and narrate procedure.*]

The said C. R. died [*or as the case may be*] on the .

The said A. B. is a creditor of the said B. D. to the extent of £ , conform to oath, account, and relative vouchers [*or as the case may be*] herewith produced, and craves to be sisted in room and place of the said C. R., in order that he may follow out the proceedings under said petition in terms of the 34th section of the Bankruptcy (Scotland) Act, 1856.

9. For Appointment of Interim Factor (B. A., 1856, s. 16).

Sheriffdom of at .

A. B. [*designation*], a creditor of C. D. & Co. [*designation*], and C. D., sole partner of said firm, *Pursuers.*

The demand of the pursuer is—

For the appointment of a judicial factor on the estates of the said C. D. & Co. and C. D.

Therefore the pursuer craves the Court—

To appoint a judicial factor for the interim preservation of the estates of the said C. D. & Co. and C. D. in terms of sec. 16 of the Bankruptcy (Scotland) Act, 1856.

CONDESCENDENCE.

1. An application for the sequestration of the estates of the said C. D. & Co. and C. D. was presented to this Court on , and is presently pending [*or*, and sequestration thereof was awarded on]. A trustee has not yet been appointed.

2. The estates of the said C. D. & Co. and C. D. consist largely of goods of a perishable nature [*or* other reasons for the application, such as that estate consists of a going concern, employing travellers and agents whose wages and advances require to be paid, and whose orders require immediate attention, &c., &c.], and the appointment of a judicial factor in terms of sec. 16 of the Bankruptcy Act, 1856, is urgently required pending the election and confirmation of a trustee.

3. The pursuer is a creditor of the said C. D. & Co. and C. D. for £50, conform to oath, account, and relative vouchers herewith produced [*or as the case may be*].

[4. The bankrupt concurs in this application.]

PLEA IN LAW.

The appointment of a judicial factor on said [*sequestrated*] estates being in the interest of the creditors necessary [*or* desirable], decree should be granted as craved.

10. For Seizure of Bank Notes, Money, &c., in Bankrupt's Possession (D. A., 1880, s. 12; B. and C. A., 1881, s. 13).

NOTE.—*By sec.* 12 *of the Debtors Act,* 1880, *the Sheriff has power at any time after the presentation of a petition for sequestration or cessio, to grant warrant to take possession of and put under safe custody any bank notes, money, bonds, bills, cheques or drafts, or other moveable property belonging to or in the possession of the debtor; and, if necessary for that purpose, to open lockfast places and to search the dwelling-house and person of the debtor. Dwelling-house includes "shop, counting-house, warehouse, or other premises" (Bankruptcy and Cessio Act,* 1881, *sec.* 13). *If the application be made after the award of sequestration, this and the succeeding petition may with advantage be combined.*

Sheriffdom of at .

A. B. [*designation*], a creditor of C. D. [*designation*], *Pursuer.*

The demand of the pursuer is—

For warrant to take possession of and put under safe custody any bank notes, money, bonds, bills, cheques or drafts, or other moveable property in the possession of the said C. D.

Therefore the pursuer craves the Court—

To grant warrant to officers of Court to take possession of and put under the custody of the Clerk of Court any bank notes, money, bonds, bills, cheques or drafts, or other moveable property belonging to or in the possession of the said C. D., and, if necessary, to open shut and lockfast places and to search the dwelling-house at [shop, counting-house, warehouse, or other premises, *as the case may be*] and the person of the said C. D.

CONDESCENDENCE.

1. The pursuer is a creditor of the said C. D. for £50, conform to oath, account, and relative vouchers herewith produced.

2. An application for sequestration of the said C. D.'s estates in terms of the Bankruptcy Acts is presently pending before this Court [*or* the estates of the said C. D. were on sequestrated by the Sheriff of].

3. Before presentation of the application for sequestration of his estates, the said C. D. received large sums of money in cash [*or* notes, bills or cheques, *as the case may be*], which are still in his possession, and he is possessed of a valuable gold watch and a quantity of jewellery [*or other special cause for the application*].

4. In the interests of said C. D.'s creditors it is necessary that a warrant be granted, as craved, in terms of sec. 12 of the Debtors Act, 1880, and the Bankruptcy and Cessio Act, 1881.

PLEA IN LAW.

This application being necessary in the interests of the creditors of the said C. D., as condescended on, warrant should be granted as craved.

11. To Secure Bankrupt's Premises, by Creditor (B. A., 1856, s. 17).

NOTE.—*This petition is only competent in the Sheriff Court, and after sequestration has been awarded* (*Act, sec.* 17). *It may frequently with advantage be combined with the preceding application.*

Sheriffdom of at .

A. B. [*designation*], a creditor upon the sequestrated estates of C. D. [*designation*], *Pursuer.*

The demand of the pursuer is—

For warrant to secure the effects of the said C. D. in terms of the Bankruptcy Acts.

Therefore the pursuer craves the Court—

To grant warrant to officers of Court to seal up and put under safe custody the books and papers of the said C. D., and to lock up his business premises at or other repositories and lodge the keys thereof with the Clerk of Court in terms of sec. 17 of the Bankruptcy (Scotland) Act, 1856.

CONDESCENDENCE.

1. The pursuer is a creditor of the said C. D. for £50, conform to oath, account, and relative vouchers [*or as the case may be*] herewith produced.

2. The estates of the said C. D. were on sequestrated by the Sheriff of .

3. The meeting for the appointment of a trustee on said sequestrated estate has not yet been held, and meantime the said C. D. has disappeared leaving no one [*or* a young and inexperienced person] in charge of his business premises.

4. Pending the appointment of a trustee, it is necessary, in the interests of his creditors, that C. D.'s books and papers should be put under safe custody.

PLEA IN LAW.

This application being necessary in the interests of C. D.'s creditors, as condescended on, warrant should be granted as craved.

12. For Valuation of a Contingent Debt, by Creditor (B. A., 1856, s. 53).

Sheriffdom of at .

A. B. [*designation*], a creditor on the sequestrated estates of C. D. [*designation*], *Pursuer.*

[against

X. Y. [*designation*], trustee on the sequestrated estates of the said C. D., *Defender.*]

The demand of the pursuer is—

For valuation of a contingent debt due to pursuer by the said C. D. in terms of sec. 53 of the Bankruptcy (Scotland) Act, 1856.

Therefore the pursuer craves the Court—

To appoint intimation of this application to be made to the said C. D. and to X. Y. [*designation*], who as a duly qualified creditor concurred in the application for sequestration of the said C. D.'s

estates [*or*, on whose application sequestration of C. D.'s estates was awarded]: To remit to an actuary to report upon the capitalised value of a contingent debt due to pursuer by the said C. D. in respect of his obligation to contribute the sum of £8 yearly towards the maintenance and support of a female illegitimate child to which pursuer gave birth on and of which the said C. D. is the father, from the date of the award of sequestration till said child attains the age of fourteen years; on resuming consideration hereof to put a value upon pursuer's said contingent claim in terms of sec. 53 of the Bankruptcy (Scotland) Act, 1856: [To ordain the said X. Y. as trustee in the foresaid sequestration to admit the pursuer to a ranking for the amount so ascertained, and to find the defender liable in expenses].

CONDESCENDENCE.

1. On the pursuer gave birth to a female illegitimate child, of which conform to decree of the Sheriff of , dated , the said C. D. is the father [*or* of which the said C. D. has admitted the paternity].

2. By said judgment pursuer obtained decree against the said C. D. for payment of £2, 2s. as inlying expenses, and £8 yearly in name of aliment for said child, payable half-yearly, from the date of said decree till the said child shall attain the age of fourteen years. The said C. D. paid pursuer the said sum of £2, 2s., and the said aliment of £8 yearly from the date of the decree till the half-yearly term preceding the award of sequestration of his estates.

3. The estates of the said C. D. were sequestrated by award of the Sheriff of on . The meeting for the election of a trustee has not yet been held.

4. At the date of his sequestration the said C. D. was due pursuer the sum of £4 as a half-year's aliment till last, and a sum of £80 representing ten years' aliment of said child till she shall attain the age of fourteen.

5. Pursuer's said claim of £80 is a contingent claim, within the meaning of sec. 53 of the Bankruptcy (Scotland) Act, 1856, the exact amount of which is dependent on the contingency of the said child's survival till the age of fourteen.

6. [The pursuer has claimed in the sequestration of C. D. for the said sums of £4 and £80, but the said X. Y. as trustee, while admitting the claim of the pursuer to rank on the estate for the sum of £4, refuses either to admit her claim to rank for the said sum of £80,

or to value the said C. D.'s obligation to pay said sum as a contingent claim within the meaning of the said Act.]

7. The pursuer is desirous of voting and drawing a dividend on said sequestrated estate, and in order to do so it is necessary that his claim in respect of said contingent obligation should be valued [and that the defender should be ordained to admit her to a ranking for the amount so ascertained].

PLEA IN LAW.

The pursuer, as a creditor on the sequestrated estates of the said C. D., is entitled to decree as craved, with expenses.

13. For Valuation of an Annuity, by Creditor (B. A., 1856, s. 54).

Sheriffdom of at .

A. B. [*designation*], a creditor on the sequestrated estates of C. D. [*designation*], *Pursuer.*

The demand of the pursuer is—

For valuation of an annuity of £50, payable by said C. D. to pursuer in terms of sec. 54 of the Bankruptcy (Scotland) Act, 1856.

Therefore the pursuer craves the Court—

To appoint intimation of this application to be made to the said C. D. and to X. Y. [*designation*], who as a duly qualified creditor concurred in the application for sequestration of the said C. D.'s estates [*or*, on whose application sequestration of C. D.'s estates was awarded]: To remit to an actuary to report upon the capitalised value of an annuity of £50 payable by the said C. D. to pursuer in virtue of a bond of annuity dated ; on resuming consideration hereof, to put a value upon said annuity in terms of sec. 54 of the Bankruptcy (Scotland) Act, 1856.

CONDESCENDENCE.

1. The estates of the said C. D. were sequestrated on , in terms of the Bankruptcy Acts, on the application of the said C. D., with the concurrence of the said X. Y., a duly qualified creditor [*or* on the application of the said X. Y.].

2. The meeting for the election of the trustee on said sequestrated estates has not yet been held.

3. By bond of annuity, herewith produced, dated , the said C. D., in consideration of the sum of £ paid to him by the

pursuer, bound himself and his heirs, executors, and representatives whomsoever, to make payment to the pursuer or his assignees of an annuity of £50 during pursuer's lifetime.

4. The pursuer is now years of age.

5. The pursuer desires to vote and draw a dividend in C. D.'s sequestration, and therefore makes this application in terms of sec. 54 of the Bankruptcy (Scotland) Act, 1856.

PLEA IN LAW.

The pursuer, as a creditor on the sequestrated estates of the said C. D. as condescended on, is entitled to decree as craved.

14. For Election of New Trustee (B. A., 1856, s. 74).

NOTE.—*If the trustee shall die, resign, or be removed, or remain at any one time for three calendar months furth of Scotland, any commissioner, or any creditor ranked or claiming and entitled to be ranked on the estate, may apply to the Sheriff for an order to hold a meeting for devolving the estate on the trustee next in succession, or electing a new trustee* (1856 *Act, sec.* 74). *In cases other than those above specified, the application must be made to the Inner House of the Court of Session.*

Sheriffdom of at .

A. B. [*designation*], a creditor on the sequestrated estates of C. D. [*designation*], *Pursuer.*

The demand of the pursuer is—

For the appointment of a meeting of the creditors of the said C. D. to elect a new trustee (Bankruptcy (Scotland) Act, 1856).

Therefore the pursuer craves the Court—

To appoint a meeting of the creditors of the said C. D. to be held for the election of a new trustee in terms of sec. 74 of the Bankruptcy (Scotland) Act, 1856.

CONDESCENDENCE.

1. The estates of the said C. D. were on sequestrated by the Sheriff of the county of .

2. At a meeting of the creditors held on , X. Y. [*designation*] was appointed trustee, and his election was thereafter duly confirmed [*or*, X. Y. [*designation*], whom failing Y. Z. [*designation*], were appointed trustees in succession, and the election of the said X. Y. was thereafter duly confirmed].

3. The said X. Y. died on [*or as the case may be*], and the present application is therefore necessary.

4. The pursuer is a commissioner on said sequestrated estates [*or* a creditor for £ , conform to oath, account, and relative vouchers herewith produced].

PLEA IN LAW.

The trustee on said sequestrated estates having died [*or as the case may be*], the pursuer, as a duly qualified creditor, is entitled to decree as craved.

15. For Examination of Bankrupt (B. A., 1856, ss. 87, 88).

NOTE.—*Within eight days after the date of his act and warrant, the trustee must present a petition to the Sheriff to fix a diet for the bankrupt's examination. The diet is intimated in the Gazette, and also to the creditors by circular. If the bankrupt is in prison for a debt or civil obligation, the Sheriff may grant warrant for his delivery to an officer of the Court. If he cannot be brought from gaol, or is by lawful cause prevented from attending at the time and place appointed, or is in custody on a criminal charge, or is abroad, the Sheriff may grant commission to take the examination* (1856 *Act, sec.* 88).

Sheriffdom of at .

A. B. [*designation*], trustee on the sequestrated estates of C. D. [*designation*], conform to act and warrant of this Court, of date , *Pursuer.*

The demand of the pursuer is—

For the public examination of the said C. D. in terms of the Bankruptcy Acts.

Therefore the pursuer craves the Court—

To fix a diet for the public examination of the said C. D., and to issue warrant for his attendance at said diet in terms of sec. 87 of the Bankruptcy (Scotland) Act, 1856, and failing his said attendance, to grant warrant for his apprehension and detention in custody till the conclusion of said examination in terms of sec. 88 of the said Act.

CONDESCENDENCE.

1. The estates of the said C. D. were on sequestrated by the Sheriff of .

2. The pursuer was elected trustee on said estates, and his election was duly confirmed, conform to act and warrant dated herewith produced.

3. This application is made in terms of secs. 87 and 88 of the Bankruptcy (Scotland) Act, 1856.

PLEA IN LAW.

The pursuer, as trustee on said sequestrated estates, is entitled to the warrants craved.

16. For Examination of Third Parties (B. A., 1856, s. 90).

NOTE.—*Under the* 1856 *Act, sec.* 90, *the Sheriff may, on the application of the trustee, grant warrant for the examination of the bankrupt's wife and family, clerks, servants, factors, law-agents, and others who can give information relative to his estate. No special reason for the application needs to be stated. They may also be required to produce for inspection all books and documents relative to the bankrupt's affairs.*

Sheriffdom of at .

A. B. [*designation*], trustee on the sequestrated estates of C. D. [*designation*], conform to act and warrant dated , *Pursuer.*

The demand of the pursuer is—

For the public examination of [*names and designations*] in terms of the Bankruptcy Acts.

Therefore the pursuer craves the Court—

To fix a diet for the public examination of the said , and to grant warrant requiring them to appear thereat, in terms of sec. 90 of the Bankruptcy (Scotland) Act, 1856.

CONDESCENDENCE.

1. On the the estates of the said C. D. were sequestrated by the Sheriff of .

2. The pursuer was elected trustee in said sequestration and thereafter duly confirmed, conform to act and warrant herewith produced.

3. Pursuer believes that material information relative to the bankrupt estate can be supplied by the persons named in the crave hereof, and he makes this application in terms of sec. 90 of the Bankruptcy (Scotland) Act, 1856.

PLEA IN LAW.

The pursuer, as trustee on said sequestrated estates, is entitled to the warrant craved.

17. By Trustee, to Compel Witness to Answer Question (B. A., 1856, s. 93).

Sheriffdom of at .

A. B. [*designation*], trustee on the sequestrated estates of C. D. [*designation*], *Pursuer*,

against

E. F. [*designation*], *Defender*.

The demand of the pursuer is—

For an order on defender to answer a question put to him by pursuer as trustee in said sequestration.

Therefore the pursuer craves the Court—

To appoint an adjourned diet of examination of defender: To order defender to attend thereat and answer the question [*state question precisely*]; failing his doing so, to grant warrant to commit defender to prison till he shall comply with said order, and to find defender liable in expenses, all in terms of sec. 93 of the Bankruptcy (Scotland) Act, 1856.

CONDESCENDENCE.

1. On the estates of the said C. D. were sequestrated by the Court, and the pursuer was duly elected and confirmed trustee, conform to act and warrant herewith produced.

2. The pursuer, believing that defender could supply material information relative to the bankrupt estate, applied to the Court, in terms of sec. 90 of said Act, on , for a warrant for the examination of the defender, and said application was granted by deliverance dated .

3. The defender attended the diet of examination appointed by said deliverance, which was held on , and being put on oath and asked by pursuer the question stated in the crave hereof, declined to answer.

4. Said question was a lawful question relative to the bankrupt's affairs, which defender was bound to answer.

PLEA IN LAW.

The defender having, in breach of the statute, refused to answer the question stated, the pursuer is entitled to decree, with expenses, as craved.

18. For Sisting Sequestration, to carry Deed of Arrangement (B. A., 1856, ss. 35-39).

NOTE.—*This application must be presented within four days from the date of the preceding resolution, otherwise the sequestration must proceed (sec. 39). Any person having an interest to oppose the resolution may apply to be heard against the petition.*

Sheriffdom of at .

A. B. [*designation*], agent in the sequestration of C. D. [*designation*], *Pursuer.*

The demand of the pursuer is—

For a sist of the sequestration and the winding up thereof under a deed of arrangement, in terms of the Bankruptcy Acts.

Therefore the pursuer craves the Court—

To appoint intimation of this application to be made in terms of sec. 38 of the Bankruptcy (Scotland) Act, 1856: To approve of the resolution of the meeting of creditors of the said C. D., held on , to wind the estate up by deed of arrangement: To sist procedure in said sequestration accordingly for [*period fixed by resolution*]; [further to appoint X. Y. [*designation*] judicial factor on the estates of the said C. D. during the period of sist]; and to find any party opposing this application liable in expenses, all in terms of secs. 35 to 39 of the Bankruptcy (Scotland) Act, 1856.

CONDESCENDENCE.

1. The estates of the said C. D. were on sequestrated by this Court. A certified copy of the petition and the deliverance thereon is herewith produced.

2. At the meeting to elect a trustee, held on , a majority in number and four-fifths in value of the creditors present or represented thereat resolved that the estate ought to be wound up under a deed of arrangement, and that an application to sist procedure for should be presented to the Court.

3. The said [*names of dissentient creditors*] voted against said resolution, and protested it had not been carried by the statutory majority of votes in number and value.

4. The said meeting further appointed the pursuer to report the said resolution to the Court, and to apply for a sist of procedure in terms thereof [and also resolved to recommend that the said X. Y. should be appointed judicial factor on the estate during the period

of sist]. The minute of said meeting of creditors is herewith produced.

PLEA IN LAW.

The said resolution having been duly carried and this application being reasonable, the sequestration should be sisted as craved.

19. Against Trustee's Deliverance on Claim of another Creditor (B. A., 1856, s. 127).

Sheriffdom of at .

A. B. [*designation*], a creditor on the sequestrated estates of C. D. [*designation*], *Pursuer*,

against

E. F. [*designation*], trustee on the said sequestrated estates, and X. Y., a creditor ranked thereon, for his interest, *Defenders.*

The complaint of the pursuer is—

That pursuer is aggrieved by the deliverance of the defender E. F., of date , admitting the claim of defender X. Y. for £ to a ranking on said estate.

Therefore the pursuer craves the Court—

To recall the said deliverance: To find that the defender X. Y. is not entitled to be ranked as a creditor, and to find the pursuer entitled to expenses.

CONDESCENDENCE.

1. On the estates of the said C. D. were sequestrated by the Court, and the defender was thereafter duly elected and confirmed trustee.

2. The pursuer is a creditor of the said C. D. for £ , and he duly lodged with the trustee the said claim with the necessary oath, account, and relative vouchers, and was thereafter ranked as a creditor on said estate for the amount of his claim.

3. The defender X. Y. alleges that he is a creditor of the said C. D. for £ , and has lodged with the trustee a claim for said amount with the necessary oath, account, and relative vouchers, and the defender E. F., by the deliverance complained of, has ranked the said X. Y. as a creditor on the estate for that amount.

4. The pursuer is dissatisfied with said deliverance for the following reasons:—

5. The said deliverance ought therefore to be recalled, and the claim

of the defender X. Y. to be ranked as a creditor on said estate for £ rejected.

PLEA IN LAW.

The defender X. Y. not being entitled to be ranked as a creditor on said estate, decree should be granted, with expenses, as craved.

20. Against Trustee's Deliverance on Appellant's own Claim (B. A., 1856, s. 127).

Sheriffdom of at .

A. B. [*designation*], a creditor claiming to be ranked on the sequestrated estates of C. D. [*designation*], *Pursuer*,

against

E. F. [*designation*], trustee on said sequestrated estates, *Defender*.

The complaint of the pursuer is—

That he is aggrieved by a deliverance of the defender, of date , rejecting pursuer's claim for £ to a ranking on said estate.

Therefore the pursuer craves the Court—

To recall the said deliverance: To find that pursuer is entitled to be ranked as a creditor on said estate for £ , and to find defender liable in expenses.

CONDESCENDENCE.

1. On the estates of the said C. D. were sequestrated by the Court, and the defender was thereafter duly elected and confirmed trustee.

2. The pursuer is a creditor of the said C. D., and conform to oath, account, and relative vouchers he lodged a claim in defender's hands as trustee in said sequestration for £ , which claim the defender has rejected by deliverance pronounced on in the following terms:—

3. The pursuer is dissatisfied with said deliverance for the following reasons:—

4. The said deliverance should therefore be recalled, and the pursuer admitted to rank as a creditor on said estate in terms of his claim for £ .

PLEA IN LAW.

The pursuer being entitled to be ranked on said estate in terms of his claim, decree should be granted, with expenses, as craved.

21. Against other Deliverances of the Trustee, or Resolution of Creditors (B. A., 1856, s. 169).

Sheriffdom of at .

A. B. [*designation*], a creditor on the sequestrated estates of C. D. [*designation*], *Pursuer.*

The complaint of the pursuer is—

That he is aggrieved by the deliverance of E. F. [*designation*], trustee on the said sequestrated estates, admitting the claim of X. Y. [*designation*] for £ to a ranking for a dividend [*or* a resolution adopted by a meeting of the creditors on said estate held on].

Therefore the pursuer craves the Court—

To order such intimation hereof as may be necessary: To recall the said deliverance [*or* resolution]: To find the said X. Y. not entitled to be ranked as a creditor on said estates [*or* to ordain the creditors on said estate to meet and reconsider the said resolution, *or as the case may be*], and to find anyone opposing liable in expenses.

Condescendence.

1. On the the estates of the said C. D. were sequestrated by the Court, and E. F. [*designation*] was duly elected and thereafter confirmed trustee.

2. The pursuer is a creditor on said estates for £ , conform to oath, account, and relative vouchers lodged in the hands of the said trustee, for which amount he has been admitted to a ranking.

3. On the said trustee pronounced the following deliverance:—

[*or* At a meeting of creditors held on the following resolution was adopted:— .]

4. The pursuer is dissatisfied with the said deliverance [*or* resolution] for the following reasons:—

5. Said deliverance should therefore be recalled, and the said E. F. found not entitled to participate in a dividend [*or* the creditors should be ordained to meet and reconsider said resolution].

Plea in Law.

The said X. Y. not being entitled to participate in a dividend on said sequestrated estates [*or* said resolution being *ultra vires* of the creditors, *or as the case may be*], decree should be granted, with expenses, as craved.

22. For Acceleration of Dividends (B. A., 1856, s. 133).

Sheriffdom of at .

A. B. [*designation*], trustee on the sequestrated estates of C. D. [*designation*], *Pursuer.*

The demand of the pursuer is—

For acceleration of the periods for payment of dividends in said sequestration, in terms of the Bankruptcy Acts.

Therefore the pursuer craves the Court—

To accelerate the periods for paying dividends and doing the other acts ancillary or preparatory thereto to [*state periods*], and to authorise the pursuer to divide the realised estate amongst the creditors according to their respective interests, all in terms of sec. 133 of the Bankruptcy (Scotland) Act, 1856.

CONDESCENDENCE.

1. The estates of the said C. D. were on sequestrated by this Court, and the pursuer was thereafter duly elected and confirmed trustee.

2. The estate has now been realised and is ready for distribution.

3. At the meeting of creditors held after the examination of C. D., the pursuer was directed by three-fourths in number and value of the creditors present to apply to the Court for authority to accelerate the periods for the payment of the dividends, in terms of sec. 133 of the Bankruptcy (Scotland) Act, 1856.

PLEA IN LAW.

The estate of the said C. D. being ready for distribution, and the pursuer being authorised to make this application by the statutory majority of creditors, acceleration of dividends should be granted as craved.

23. To Compel Creditor to Assign Security (B. A., 1856, s. 65).

NOTE.—*In order to vote at a meeting, a creditor must in his claim value and deduct all securities held by him, and also all obligations and claims specified in secs.* 59, 60, *and* 61 *of the* 1856 *Act. To prevent under-valuation, the trustee and commissioners may within two months after such oath has been used at any meeting require the creditor to convey the security, obligation, or claim at the value specified, plus twenty per cent. A majority of creditors present at any meeting* (*excluding the creditor required to assign*) *may exercise the same right.*

In order to claim a ranking, a creditor only needs to value and deduct

securities. In this case the trustee, with commissioners' consent, may require a conveyance of the security at the net value placed on it (*sec.* 65). *The option, must, however, be exercised within a reasonable time.*

Sheriffdom of at .

A. B. [*designation*], trustee on the sequestrated estates of C. D. [*designation*], *Pursuer*,

against

E. F. [*designation*], a creditor of the said C. D., *Defender.*

The demand of the pursuer is—

For a decree ordaining the defender, on payment of £ , to convey [*or* assign, *or as the case may be*] to pursuer [*specify security, obligation, or claim*].

Therefore the pursuer craves the Court—

To ordain the defender, at the expense of the said sequestrated estate, and on payment to him of £ , to grant a conveyance [*or* assignation, *or other transfer*] in favour of pursuer as trustee foresaid, of [*specify security, obligation, or claim*], and to find the defender liable in expenses, all in terms of sec. 62 of the Bankruptcy (Scotland) Act, 1856.

CONDESCENDENCE.

1. On the estates of the said C. D. were sequestrated by the Sheriff of under the Bankruptcy Acts, and the pursuer was duly elected and confirmed trustee, conform to act and warrant herewith produced.

2. At a meeting of creditors on said sequestrated estates held on , the defender lodged an oath and claim for £ , but in respect he held in security of said debt the security [*or* obligation, *or* claim] mentioned in the crave hereof, the defender valued said security at £ , and after deducting that sum from his debt claimed to vote and rank on the sequestrated estate for £ .

3. The defender in virtue of said oath and claim voted at the said meeting of creditors.

4. The pursuer, with the consent of [*names and designations*], the commissioners on said sequestrated estate, on required from the defender a conveyance [*or* assignation, *or other transfer*] of said security [*or* obligation, *or* claim] on payment of £ , being the specified value thereof with 20 per cent. in addition thereto.

5. On the pursuer's agent sent to the defender a draft conveyance of the said security, with a request for its revisal and

return [*or as the case may be*], which the defender refuses or delays to do.

6. The pursuer makes this application in terms of sec. 62 of the Bankruptcy (Scotland) Act, 1856.

PLEA IN LAW.

The defender being bound to convey to pursuer as trustee foresaid the security [*or* obligation, *or* claim] specified, decree should be granted, with expenses, as craved.

24. To Compel Bankrupt to Execute Deed (B. A., 1856, s. 81).

Sheriffdom of at .

A. B. [*designation*], trustee on the sequestrated estates of C. D. [*designation*], *Pursuer*,

against

The said C. D., *Defender*.

The demand of the pursuer is—

For a decree ordaining the defender to give the pursuer the information and assistance necessary to enable him to execute his duty, and in particular to execute in favour of pursuer an assignation [*or* conveyance, *or* transfer] of [*specify subjects or estate*].

Therefore the pursuer craves the Court—

To ordain the defender, within such time as the Court may appoint, to give the pursuer such information and assistance as will enable him to do his duty, and in particular to execute in favour of pursuer as trustee foresaid an assignation [*or* conveyance, *or* transfer], in terms of the deed lodged herewith, of [*specify subjects or estate*], and failing his doing so within said period, to grant warrant for his imprisonment till he does so.

CONDESCENDENCE.

1. The estates of the defender were on sequestrated by the Sheriff of in terms of the Bankruptcy Acts, and the pursuer was duly elected and confirmed trustee, conform to act and warrant herewith produced.

2. The bankrupt is the nephew and successor of X. Y. [*designation*], who died at New York on , and who was possessed of considerable real and personal estate in America.

[*or* The bankrupt is the registered owner of 500 shares in ;

or Part of the bankrupt's property consists in heritable property situated in the city of New York; *or as the case may be.*]

3. To enable pursuer to complete a title to said property [*or* shares, *or as the case may be*], it is necessary that he should obtain from the bankrupt the assignation [*or* conveyance, *or* transfer] craved, and lodged herewith [*or* in terms of the draft thereof lodged herewith].

4. The pursuer has called upon defender, in terms of sec. 81 of the Bankruptcy (Scotland) Act, 1856, to give pursuer all such information and assistance relating to said property as may enable him to do his duty as trustee, and particularly to execute said deed [*or* conveyance, *or* transfer], but the defender refuses or delays to give the necessary information, or to execute the said deed.

PLEA IN LAW.

The defender being bound to give the pursuer the assistance and information craved, and to execute the deed [*or* assignation, conveyance, *or* transfer] specified, the pursuer is entitled to decree, with expenses, as craved.

25. To Claim Part of Bankrupt's Government Pay or Pension (B. A., 1836, s. 149).

NOTE.—*Government pay or pension may, in part, be claimed for the benefit of creditors* (*Act* 1856, *sec.* 149). *The petition must be intimated to the bankrupt. In one case where intimation was not made, the petition was dismissed* (*Scott's Tr.* v. *Scott*, 1884, 12 *R.* 182). *The order, if made, may be subsequently recalled or varied.*

Sheriffdom of at .

A. B. [*designation*], trustee on the sequestrated estates of C. D. [*designation*], *Pursuer,*

against

The said C. D., *Defender.*

The demand of the pursuer is—

For an order for the payment of part of the bankrupt's Government pay [*or* pension] to the pursuer.

Therefore the pursuer craves the Court—

To appoint intimation hereof to be made to the defender, and to ordain that such portion of the defender's salary [*or* pension], payable by His Majesty's Paymaster-General, as the Commissioners of [*departmental employers of bankrupt*] may consent to, shall be paid to pursuer in terms of sec. 149 of the Bankruptcy (Scotland) Act, 1856.

CONDESCENDENCE.

1. On the estates of the defender were sequestrated by the Court, and pursuer was duly elected and confirmed trustee, conform to act and warrant herewith produced.

2. The bankrupt was at the date of the sequestration of his estates, and still is, in the employment of His Majesty [*state departmental employers*], at an annual salary of £ [*or as the case may be*].

3. The bankrupt's liabilities amount to £ , and his assets to £ .

4. The bankrupt is years of age, is married, and has a family of , who are all grown up [*or as the case may be*]. The bankrupt is therefore able to spare a portion of said salary for the benefit of his creditors.

PLEA IN LAW.

The defender's salary being more than a *beneficium competentiæ*, decree ought to be granted as craved.

26. For Authority to Trustee to Open Letters (B. A., 1856, s. 179).

NOTE.—*The Sheriff, on cause shewn, may order that for a period not exceeding three months from the date of the order, all letters addressed to the bankrupt shall be delivered by the Postmaster-General, or the officers acting under him, to the Sheriff-Clerk or trustee, to be opened in presence of the Sheriff, after written notice to the bankrupt to attend, if within Scotland; and in case the letters shall relate in whole or in part to the estate, they shall be placed in such custody as the Sheriff may direct. The Sheriff may, on cause shewn, renew such order for a like period as often as shall be necessary* (1856 *Act, sec.* 179).

Sheriffdom of at .

A. B. [*designation*], trustee on the sequestrated estates of C. D. [*designation*], *Pursuer*,

against

The said C. D., *Defender*.

The demand of the pursuer is—

For warrant to open all post letters addressed to defender.

Therefore the pursuer craves the Court—

To order that for a period of three months from this date all post letters addressed to defender shall be delivered to pursuer to be dealt with in terms of sec. 179 of the Bankruptcy (Scotland)

Act, 1856, and to grant warrant to the Postmaster-General, or officials acting under him, to deliver all such letters to pursuer.

CONDESCENDENCE.

1. The estates of the defender were on sequestrated by the Court in terms of the Bankruptcy Acts, and the pursuer was duly elected and confirmed trustee.

2. Since the date of his sequestration the defender has absconded, without notice to pursuer, and his present address is unknown [*or other reason for the application*].

3. In order to obtain necessary information relative to defender's business, the pursuer makes this application in terms of sec. 179 of the Bankruptcy (Scotland) Act, 1856.

PLEA IN LAW.

The bankrupt having absconded, the pursuer as trustee foresaid is entitled to obtain the order and warrant craved.

27. For Dismissal of Trustee (B. A., 1856, s. 83).

NOTE.—*Besides removal by or at the instance of a meeting of creditors, a trustee is liable to be dismissed or censured by the Court whenever he wilfully fails in any of the duties imposed on him by statute.*

Under sec. 83 *of the* 1856 *Act, if a trustee keeps more than* £50 *in his hands for more than ten days he must pay* 20 *per cent. interest on the excess for the period beyond ten days, and will also, unless the money was kept from innocent causes, be dismissed from office without remuneration. The petition must proceed at the instance of a creditor, and may be presented to either the Lord Ordinary on the Bills or the Sheriff. Unless an innocent cause be proved, the trustee must be dismissed and found liable in expenses.*

Sheriffdom of at .

A. B. [*designation*], a creditor on the sequestrated estates of C. D. [*designation*], *Pursuer*,

against

E. F. [*designation*], trustee on the sequestrated estates of the said C. D., *Defender.*

The demand of the pursuer is—

For dismissal of defender from his office of trustee.

Therefore the pursuer craves the Court—

To dismiss defender from his office of trustee in said sequestration, to declare his remuneration forfeited, and to find him liable in expenses, all in terms of sec. 83 of the Bankruptcy (Scotland) Act, 1856.

CONDESCENDENCE.

1. The estates of the said C. D. were on sequestrated by the Sheriff of in terms of the Bankruptcy Acts, and the defender was duly elected and confirmed trustee.

2. The pursuer is a creditor on said sequestrated estates for £ , conform to oath, account, and relative vouchers herewith produced.

3. The defender, in the course of administering said estates, received on £ , being the proceeds of , which belonged to the bankrupt.

4. For months the defender has retained said sum in his hands [*or* is believed to have placed said sum to the credit of his private banking account], and has failed to lodge it in bank as required by sec. 82 of the Bankruptcy (Scotland) Act, 1856.

5. Defender's failure to lodge said sum in bank as required by said Act has not arisen from innocent causes, within the meaning of said Act.

PLEA IN LAW.

The defender being in breach of his statutory duty, as condescended on, pursuer is entitled to decree as craved.

28. By Bankrupt, for his Discharge (B. A., 1856, s. 146; Cessio Act, 1881, s. 6).

NOTE.—*An application by a bankrupt for his discharge may be made at various stages of the sequestration process, viz.:—*

1. *At any time after the meeting held after the examination of the bankrupt, provided every creditor who has produced his oath concurs in the petition.*

2. *On the expiration of six months from the date of the deliverance awarding sequestration, provided a majority in number and four-fifths in value of the creditors who have produced oaths concur in the petition.*

3. *On the expiration of twelve months from the date of the deliverance awarding sequestration, provided a majority in number and two-thirds in value of such creditors concur in the petition.*

4. *On the expiration of eighteen months from the date of the deliver-*

ance awarding sequestration, provided a majority in number and value concur in the petition; and

5. *On the expiration of two years from the date of the deliverance actually awarding sequestration, without any consents of creditors.*

At whatever stage the application is presented, the bankrupt must always satisfy the Sheriff that the conditions stated in sec. 6 of the Bankruptcy and Cessio Act, 1881, *have been fulfilled.*

The application must be at the instance of the bankrupt, unless he be abroad, dead, or insane, when it may be made respectively by his mandatory, representatives, or curator.

A report by the trustee as to bankrupt's conduct must be produced, stating whether he has (1) *made a fair discovery and surrender of his estate;* (2) *attended the examination;* (3) *been guilty of collusion; and* (4) *become bankrupt through innocent misfortune or his own fault. If the trustee be dead or not accessible, application must be made to the Court of Session for a remit to the Accountant of Court to prepare a report.*

Evidence in writing of the creditors' concurrence must be produced. It must bear that the concurrence was given before presentation of the petition, and after and in view of the trustee's report. It should also have appended to it a certificate by the trustee, that the subscribing creditors form the required majority in number and value. If the Court find the bankrupt entitled to discharge, a deliverance to that effect will be given. He must then make a declaration or oath before the Sheriff. If he is beyond the jurisdiction of the judge, or is prevented by lawful cause from appearing personally, the declaration may be taken on commission. If dead or insane, the Court of Session may, in the exercise of its nobile officium, *dispense with it.*

Sheriffdom of at .

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For his discharge in terms of the Bankruptcy Acts.

Therefore the pursuer craves the Court—

To appoint intimation hereof to be made in terms of sec. 146 of the Bankruptcy (Scotland) Act, 1856: To find, in terms of sec. 6 of the Bankruptcy and Cessio (Scotland) Act, 1881, that pursuer's failure to pay a dividend of 5s. in the £ has arisen from circumstances for which he cannot be justly held responsible; and to pronounce a deliverance discharging the pursuer of all debts and obligations contracted by him, or for which he was liable, prior to the date of his sequestration, all in terms of said Acts.

CONDESCENDENCE.

1. The estates of the pursuer were on sequestrated by the Court in terms of the Bankruptcy Acts, and the pursuer was thereafter duly elected and confirmed trustee.

2. The statutory meeting of creditors appointed to be held after the examination of the pursuer was held on , 19 , and months having now elapsed from the date of the deliverance awarding sequestration, the pursuer is desirous of being finally discharged of all debts contracted by him or for which he was liable, prior to the said date.

[3. The whole [*or* a majority in number and four-fifths in value, *or as the case may be*] of the creditors who have produced oaths and claims for ranking in the sequestration concur in this application, conform to minute of concurrence and certificate by X. Y. [*designation*], the trustee, herewith produced.]

4. A report by the trustee, prepared in terms of sec. 146 of the Bankruptcy (Scotland) Act, 1856, is also herewith produced.

5. A dividend of in the £ has been paid to the creditors [and, as the trustee reports, a further dividend of in the £ will probably be declared].

6. The pursuer's failure to pay a dividend of 5s. in the £ has arisen from circumstances for which he cannot justly be held responsible.

PLEA IN LAW.

The pursuer, having complied with the statutory provisions, is entitled to his discharge as craved.

29. By Trustee, for his Discharge (B. A., 1856, s. 152).

NOTE.—*Unless where the trustee has resigned or died, his judicial discharge cannot be obtained until the sequestration has been ended, either by composition contract or "a final division of the funds."*

In the ordinary case, i.e. *after final division, the trustee must call a meeting of the creditors by advertisement in the Edinburgh Gazette, and letters posted to every creditor who has produced an oath. The meeting must not be sooner than twenty-one days after the Gazette notice.*

At the meeting the trustee produces the sederunt-book, accounts, and list of unclaimed dividends, and if satisfied with his conduct the minute of meeting so states, and authorises him to apply for his discharge. He then applies by petition to the Sheriff for exoneration and discharge. The petition must be intimated to the Accountant, and also to objecting

creditors, if any. Before his discharge the trustee must deliver to the Accountant of Court the sederunt-book, and lodge in bank any unclaimed dividends.

The extract decree must be forthwith transmitted to the Accountant of Court, and also entered in the register of sequestrations, and the trustee's bond of caution will be delivered up.

A trustee who has resigned, or the representatives of one who has died, may obtain a discharge on the estate being handed over to a new trustee.

Sheriffdom of at .

A. B. [*designation*], trustee on the sequestrated estates of C. D. [*designation*], *Pursuer.*

The demand of the pursuer is—

For his discharge in terms of the Bankruptcy Acts.

Therefore the pursuer craves the Court—

To pronounce decree of exoneration and discharge of the pursuer in terms of sec. 152 of the Bankruptcy (Scotland) Act, 1856, and to authorise the Clerk of Court to deliver up his bond of caution.

CONDESCENDENCE.

1. The estates of the said C. D. were on sequestrated by the Court under the Bankruptcy Acts, and the pursuer was thereafter duly elected and confirmed trustee, conform to act and warrant herewith produced.

2. The bankrupt's estate having been finally distributed among his creditors, pursuer called a meeting of creditors, in terms of sec. 152 of the Bankruptcy (Scotland) Act, 1856, to consider his discharge. A copy of the *Edinburgh Gazette*, of date , and the certificates of posting letters to the creditors are herewith produced.

3. At said meeting, which was held on , within , the pursuer laid before the creditors the sederunt-book, accounts, and list of unclaimed dividends. The creditors then declared themselves satisfied with pursuer's conduct as trustee [*or* the pursuer duly attended said meeting, but no creditor or representative of a creditor appeared]. The minute of said meeting is herewith produced.

4. The pursuer has complied with the requirements of said Act, and in terms thereof makes this application for his exoneration and discharge.

PLEA IN LAW.

The bankrupt estate having been finally distributed, and the pursuer having complied with the statutory provisions, he is entitled to decree as craved.

30. By Trustee for Delivery of his Bond of Caution (where Estate Wound Up under Deed of Arrangement).

NOTE.—*In practice a trustee rarely makes a formal application for his discharge where the estate is wound up under a composition contract, for the discharge of the bankrupt under such a contract declares the sequestration at an end. Where, however, the trustee desires to get a formal discharge and delivery of his bond of caution, the practice is to grant it at once upon the consent of the bankrupt and his cautioner to the application being produced.*

Sheriffdom of at .

A. B. [*designation*], trustee on the sequestrated estates of C. D. [*designation*], *Pursuer,*

The demand of the pursuer is—

For delivery of his bond of caution.

Therefore the pursuer craves the Court—

To authorise the Clerk of Court to deliver up to pursuer his bond of caution.

CONDESCENDENCE.

1. The estates of the said C. D. were on sequestrated by the Sheriff of , in terms of the Bankruptcy Acts.

2. At the first general meeting, held on , the creditors elected the pursuer as trustee, fixed his caution at £ , and approved of X. Y. [*designation*] as his cautioner.

3. The pursuer accordingly lodged with the Clerk of Court a bond of caution, in the statutory terms, with the said X. Y. as cautioner.

4. At the said meeting of creditors [*or as the case may be*] held on , the bankrupt made an offer of composition, offering Y. Z. [*designation*] as security therefor, which offer and security were duly entertained and ultimately accepted.

5. On the Sheriff of pronounced a deliverance discharging the said bankrupt, declaring the sequestration at an end, and reinvesting the bankrupt in his estate.

6. The pursuer's accounts were, prior to said discharge, duly audited by the Commissioners, who found, conform to docqueted account herewith produced, that no balance was due by him to the estate.

7. The said bankrupt and Y. Z. concur in this application.

PLEA IN LAW.

The pursuer, having duly performed his statutory duties, and the sequestration being at an end, he is entitled to decree as craved.

31. Against Creditor, in Respect of Preference or Collusive Agreement for Bankrupt's Discharge (B. A., 1856, s. 150).

(*See also* MULTIPLEPOINDING, No. 5.)

NOTE.—"*All preferences, gratuities, securities, payments, or other consideration not sanctioned by this Act, granted, made, or promised, and all secret or collusive agreements and transactions, for concurring in, facilitating, or obtaining the bankrupt's discharge, either on or without an offer of composition, and whether the offer be accepted or not, or the discharge granted or not, shall be null and void*" (1856 *Act, sec.* 150). *If the preference be obtained during the sequestration, the trustee, or any creditor, may petition the Sheriff to find such creditor* (1) *to have forfeited his debt;* (2) *to be bound to pay the trustee, for the benefit of the other creditors, double the preference received or promised. Collusion or secrecy are not necessary, and the Court has no power to reduce the penalty* (*Pendreigh's Tr.*, 9 *M.* (*H. L.*) 49).

Sheriffdom of at .

A. B. [*designation*], trustee [or E. F. [*designation*], a creditor ranked], on the sequestrated estates of C. D. [*designation*], *Pursuer*,

against

X. Y. [*designation*], a creditor on the said sequestrated estates, *Defender*.

The demand of the pursuer is—

For declarator that defender, in breach of sec. 150 of the Bankruptcy (Scotland) Act, 1856, obtained a preference for concurring in and facilitating the said bankrupt's discharge.

Therefore the pursuer craves the Court—

To declare that defender has forfeited the debt claimed by him as a creditor on the sequestrated estates of the said C. D.: To ordain him to pay to the pursuer as trustee foresaid [*or* to A. B. [*designation*], trustee on the said sequestrated estates] £ , with interest at 5 per cent. from the date of the decree to follow; and to find defender liable in expenses.

CONDESCENDENCE.

1. The estates of the said C. D. were on sequestrated by the Sheriff of , and the pursuer was thereafter duly elected and confirmed trustee, conform to act and warrant herewith produced.

2. The defender claims to rank on said estates as a creditor for £ .

3. At the statutory meeting held after the examination of the bankrupt, the said bankrupt made an offer of a composition of in

the £, with security, which offer and security were duly entertained. The defender voted against entertaining said offer.

4. At a meeting held on said offer was accepted, defender being neither present nor represented.

5. Prior to said last-mentioned meeting the defender, in breach of sec. 150 of the Bankruptcy (Scotland) Act, 1856, secretly and collusively agreed with the bankrupt that for payment of £ over and above the amount of said composition he would absent himself from said meeting and not further oppose the acceptance of said offer.

6. In pursuance of said collusive agreement the defender, on or about , accepted the said sum of £ .

7. The defender has thus, in terms of said Act, forfeited the debt due him by the bankrupt, and has incurred a penalty of £ , payable to pursuer.

PLEA IN LAW.

The defender having contravened the statutory provisions as condescended on, decree should be pronounced, with expenses, as craved.

32. Action of Multiplepoinding for same, after Sequestration Closed (B. A., 1856, s. 150).

(*See also* MULTIPLEPOINDING, No. 6.)

NOTE.—*If the preference is not discovered till after the sequestration has been closed, any creditor may raise a multiplepoinding in name of the person who received the preference. The fund* in medio *is double the value of the preference, together with the amount of the debt of the colluding creditor. The action must be intimated in the Gazette, and any creditor ranked or entitled to rank, and who has not been paid his debt in full, may lodge a claim. Any surplus, after paying expenses and the full debts of claimants, is paid into the account of unclaimed dividends.*

Sheriffdom of at .

A. B. [*designation*], a creditor ranked on the sequestrated estates of C. D. [*designation*], *Pursuer and Nominal Raiser*,

against

E. F. [*designation*], *Real Raiser*, and [*names and designations*] the whole creditors entitled to a ranking in said sequestration, and who have not received full payment of their debts, *Defenders*.

The demand of the real raiser is—

For declarator that pursuer is the holder of a fund *in medio* of £ , and for consignation thereof for division amongst the creditors in said sequestration.

Therefore the pursuer craves the Court—

To grant warrant for service hereof upon the nominal raiser, and to order intimation hereof in the *Edinburgh Gazette:* To declare the nominal raiser to be the holder of a fund *in medio* of £ , consisting of (*a*) the sum of £ , being double the amount of a payment of £ given by the bankrupt, the said C. D. [*or* by G. H. [*designation*]], to the nominal raiser as a secret and collusive consideration for his concurrence in an application by the said C. D. for his discharge in said sequestration; and (*b*) the sum of £ , the amount of the claim for which pursuer was ranked in said sequestration, and the dividends thereon: To find that said nominal raiser has forfeited his said debt of £ , and the dividends thereon: To order said nominal raiser to consign said fund *in medio,* and on consignation thereof to exoner him: To grant decree in favour of the parties who shall establish their right to the fund *in medio;* And to find the real raiser entitled to his expenses out of said fund.

CONDESCENDENCE.

1. The estates of the said C. D. were on sequestrated by the Sheriff of , in terms of the Bankruptcy Acts.

2. At the statutory meeting held after his examination, the bankrupt made an offer of a composition of in the £, which was duly entertained, and, at a subsequent meeting held on , accepted.

3. Thereafter on the Sheriff of pronounced a deliverance discharging the bankrupt, declaring the sequestration at an end, and reinvesting him in his estates.

4. In carrying through said composition settlement, the real raiser avers that the bankrupt [*or* the said G. H.] secretly and collusively paid to pursuer £ as a preference or consideration, over and above said composition, for concurring in and facilitating said bankrupt's discharge in the sequestration, in breach of sec. 150 of the Bankruptcy (Scotland) Act, 1856.

PLEA IN LAW.

The pursuer having contravened the statutory provisions as condescended on, decree should be granted, with expenses, as craved.

33. By Reinvested Bankrupt against Trustee, to Account (B. A., 1856, ss. 86, 142).

NOTE.—*When a bankrupt has been discharged under a composition contract, the trustee and his cautioner are liable, on petition to the Sheriff byt he bankrupt or his cautioner, to account for the intromissions and other*

acts of the trustee (*Act* 1856, *secs.* 86, 142). *The trustee does not require to be resident within the jurisdiction of the Sheriff. An action at common law for an accounting by the bankrupt against the trustee is not competent after the close of the sequestration* (*Burns* v. *Craig*, 1869, 7 *M.* 476). *The general power to call the trustee to account conferred by sec.* 86 *can only rarely be resorted to, as other forms of process are usually competent. Most of the reported cases under this section have been thrown out as incompetent or irrelevant, or both.*

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], some time trustee on the sequestrated estates of pursuer, *Defender*.

The demand of the pursuer is—

For an accounting by defender as trustee foresaid.

Therefore the pursuer craves the Court—

To ordain the defender to account to the pursuer for his intromissions as trustee foresaid, and to pay the pursuer £ , and to find the defender liable in expenses.

CONDESCENDENCE.

1. On the estates of the pursuer were sequestrated by the Sheriff of , in terms of the Bankruptcy Acts, and the defender was duly elected, and on confirmed trustee.

2. At the meeting held after his examination the pursuer offered a composition of in the £, with security, which offer and security were duly entertained, and, at a meeting held on , accepted. Thereafter the Sheriff pronounced the deliverance, an extract of which is herewith produced, discharging pursuer, and reinvesting him in his estates.

3. The defender has retained in his hands at least £ , which belongs to pursuer, and which he refuses or delays to pay pursuer.

PLEA IN LAW.

The defender being bound to account to pursuer in terms of the Bankruptcy Acts, the pursuer is entitled to decree, with expenses, as craved.

34. By Trustee, for Delivery or Payment (under Act 1621, c. 18).

NOTE.—*This statute strikes at two classes of alienations by insolvents:* (1) *To conjunct and confident persons, and* (2) *in defraud of prior dili-*

gences. The second branch is, since the alteration in the law as to the constitution of notour bankruptcy, rarely, if ever, of practical use.

To come under the first branch of the statute, the alienation must be (1) *to a conjunct and confident person;* (2) *without onerous consideration;* (3) *while insolvent; and* (4) *voluntary. These must be* averred *to have existed at the date of alienation; but if it be proved that the alienation was to a conjunct and confident person, and that the alienor is at the date of challenge insolvent, then the onus of disproving the other two requisites will be on the defender.*

The title to challenge is in (1) *a trustee in the insolvent's sequestration;* (2) *any creditor whose ground of debt is prior to the alienation;* (3) *in certain circumstances the trustee under a voluntary trust-deed* (*see* infra); (4) *the insolvent, if reinvested in his estate on composition in a sequestration, and also expressly assigned to his creditors' right of challenge; and* (5) *the purchaser of a bankrupt estate with express assignation of the right of challenge.*

Individual creditors and the trustee under a voluntary trust-deed (*unless they represent the whole of the insolvent's creditors*) *cannot sue for payment or delivery to themselves, but only for reduction.*

The statute may be the ground of direct action, or be pleaded by way of exception. In the Court of Session the action usually takes the form of a reduction; in the Sheriff Court, of a petitory action for delivery of the subject alienated, or payment of its value.

Sheriffdom of at .

A. B. [*designation*], trustee on the sequestrated estates of C. D. [*designation*], *Pursuer*,

against

E. F. [*designation*], *Defender.*

The demand of the pursuer is—

For delivery of a bill of exchange, dated .

Therefore the pursuer craves the Court—

To declare that the indorsation and delivery by the said C. D. to the defender of a bill of exchange, dated , and payable three months after date, drawn by the said C. D. upon and accepted by X. Y. [*designation*], was an illegal preference to defender within the meaning of the Act 1621, c. 18: To ordain the defender to deliver said bill of exchange to pursuer within fourteen days, and failing such delivery to ordain defender to pay to the pursuer £ , with interest from the date of citation, and to find the defender liable in expenses.

CONDESCENDENCE.

1. The estates of the said C. D. were on sequestrated by the Sheriff of , and the pursuer was duly elected and confirmed trustee conform to act and warrant herewith produced.

2. On or about the said C. D. indorsed and delivered to defender the bill of exchange referred to in the crave hereof. No money value or other onerous consideration was received by the said C. D. from the defender in respect of said bill.

3. The said bill was indorsed and delivered to defender, who is a brother-in-law [*or as the case may be*] of and conjunct and confident with defender, without true, just, or necessary cause, and when the said C. D. was insolvent.

4. The defender refuses or delays to deliver said bill to pursuer.

PLEA IN LAW.

The indorsation and delivery of said bill to defender being in breach of the statute as condescended on, the pursuer is entitled to decree, with expenses, as craved.

35. By Trustee, for Delivery or Payment (under Act 1696, c. 5).

NOTE.—*This statute,* inter alia, *strikes at all preferences (whatever be the form taken by the transaction) granted by a bankrupt to any creditor at, after, or within sixty days before his becoming bankrupt. Proof of intention to defraud, or even give a preference, or of the grant being in contemplation of bankruptcy, or of collusion by the creditor, do not seem to be essential.*

A challenge under the Act may be made by (1) *a creditor whose debt was incurred prior to the date of the alienation*; (2) *the trustee in the grantor's sequestration;* (3) *the liquidator of a public company, provided he represents prior creditors;* (4) *the bankrupt even may challenge such preferences where he has been reinvested in his estates on a composition arrangement, provided* (i.) *he has obtained a special assignation of the creditor's right to challenge, and* (ii.) *notice is given to the preferred creditor in course of the composition arrangement that the challenge is intended;* (5) *the purchaser of a sequestrated estate under a deed of arrangement, provided he obtains an express assignation; and* (6) *any person who has obtained a prior conveyance or assignation to the subject alienated. The trustee in a voluntary trust-deed, if he is assignee of a creditor entitled to reduce, has the rights of that creditor, but unless he represents the whole of*

the trustee's creditors he does not seem to have a title to sue for payment or delivery (*Cook*, 23 *R.* 925; *M'Laren*, 24 *R.* 920).

As in the case of proceedings under the Act 1621, *c.* 18, *the challenge may be made either by way of action or exception. Where the proceedings are in the Court of Session, an action of reduction is the usual remedy. In the Sheriff Court an action of reduction is still in form incompetent, but the same end may be attained either by incidental exception or by a direct action for delivery or payment of the value of the preference granted.*

Sheriffdom of at .

A. B. [*designation*], trustee on the sequestrated estates of C. D. [*designation*], *Pursuer*,

against

E. F. [*designation*], *Defender*,

The demand of the pursuer is—

For delivery of a horse, delivered by the said C. D. to defender.

Therefore the pursuer craves the Court—

To declare that the delivery by the said C. D. to the defender on or about of a bay horse was an illegal preference to defender within the meaning of the Act 1696, c. 5: To ordain the defender within fourteen days to deliver the said horse to pursuer, and failing such delivery to ordain the defender to pay to pursuer £ , with interest from the date of citation, and to find defender liable in expenses.

CONDESCENDENCE.

1. The estates of the said C. D. were, on , sequestrated by the Sheriff of , and the pursuer was duly elected and confirmed trustee, conform to act and warrant herewith produced.

2. On or about the said C. D. delivered a bay horse belonging to him to defender. No money price or other onerous consideration was received by the said C. D. for said horse.

3. The said horse was delivered to defender after the said C. D. was notour bankrupt [or at least within sixty days prior to his notour bankruptcy], which occurred on by [*state how*].

4. At the date of said delivery the said C. D. was indebted to the defender for goods supplied to him to over £ , for which he held no security [*or as the case may be*].

5. The delivery of said horse to defender was a contravention of the Act 1696, c. 5, and the pursuer is entitled to its redelivery or to payment of its value, which is £ .

PLEA IN LAW.

The delivery of said horse by the said C. D. to defender being in breach of the Act 1696, c. 5, as condescended on, pursuer is entitled to decree, with expenses, as craved.

36. By Trustee, for Reduction of Gratuitous Alienation, at Common Law.

NOTE.—*An alienation dependent on writing can be set aside only by direct action of reduction in the Court of Session, whether under the Acts* 1621 *and* 1696, *or at common law; but where there is no writing the challenge may be in the form of a petitory action in the Sheriff Court. The style of initial writ for reduction of a gratuitous alienation at common law is similar to those in actions under the statutes, except that it must be averred that the alienation was gratuitous, to the prejudice of lawful creditors, and that the grantor was at the date of the alienation, and is still, insolvent, and that there must be a plea in law applicable to common law. Usually the action is laid alternatively under statute or at common law.*

37. Action of Multiplepoinding, to Recover Share of Proceeds of Diligence (B. A., 1856, s. 12).

(*See also* MULTIPLEPOINDING, No. 7.)

NOTE.—*By this section arrestments and poindings within sixty days before or four months after notour bankruptcy are to be ranked* pari passu. *This applies also to companies which have been rendered notour bankrupt. Competing creditors do not require to execute their diligences, as it is enough if in the process (furthcoming, poinding and sale, or multiplepoinding) they produce liquid grounds of debt or a decree within the statutory period. Where the first creditor has recovered under his diligence, other creditors entitled to rank* pari passu *may raise action against him to account. An action of multiplepoinding is usually the most convenient form; but where there are only two creditors involved a simple action for payment may suffice.*

Sheriffdom of at .

A. B. [*designation*], *Pursuer and Nominal Raiser,*

against

C. D. [*designation*], common debtor, and E. F. [*designation*], real raiser, G. H. [*designation*], and I. J. [*designation*], claiming to be creditors of the said C. D., *Defenders.*

The demand of the pursuer and nominal raiser is—

For exoneration and discharge as the holder of a fund *in medio* of £ .

Therefore the pursuer and nominal raiser craves the Court—

To declare that the pursuer and nominal raiser, as the holder of a fund *in medio* claimed by defenders, is liable in only once and single payment thereof, and that on consignation or payment thereof he is entitled to exoneration, with expenses; and to grant decree in favour of the parties who may establish their right to said fund.

CONDESCENDENCE.

1. On the pursuer [*or as the case may be*], in virtue of an extract decree following upon an action at his instance against the said C. D., arrested certain funds in the hands of M. N. [*designation*], and upon he obtained a decree of furthcoming against said M. N. Thereafter he recovered payment of £ under said decree of furthcoming. [*If the fund consists of a sum received under a sale of poinded effects of the common debtor, narrate procedure shortly up to recovery of proceeds of sale.*]

2. The said C. D. was made a notour bankrupt on by [*narrate diligence*]. The other defenders are, or claim to be, his creditors having liquid grounds of debt or decrees for payment against him, and desire to participate in the sum recovered under said decree of furthcoming [*or* sale of poinded effects].

3. The pursuer and nominal raiser [*or* real raiser *as the case may be*] is willing that the fund in his hands recovered under said decree of furthcoming [*or* sale of poinded effects], less the expenses of the diligence and of this action, should be distributed among the parties, including himself, having best right thereto.

PLEA IN LAW.

The pursuer having recovered the fund *in medio*, as condescended on, is entitled to decree as craved and the expenses *primo loco* of said diligence and of this action.

38. Accounting and Payment, or Payment, to Recover Share of Proceeds of Diligence (B. A., 1856, s. 12).

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is— .

For an accounting by defender of his intromissions with the proceeds

of a sale of certain poinded effects belonging to E. F. [*designation*] [*or* the amount recovered by him under an extract decree of furthcoming dated , of money belonging to E. F. [*designation*]], and failing such accounting, for payment by defender of £ .

Therefore the pursuer craves the Court—

To ordain the defender to produce a full account of his intromissions with the proceeds of a sale carried through by him, or on his instructions, on , of certain effects which belonged to the said E. F. [*or* the amount recovered by him under an extract decree of furthcoming, dated , of money belonging to the said E. F.], and to pay to the pursuer £ or such sum as may be found to be his proportion of the free proceeds of said sale, under deduction of the expenses of said poinding and sale, with interest from the date of citation; and failing such accounting, to grant decree against the defender for payment to pursuer of £ with interest as foresaid, and to find the defender liable in expenses.

CONDESCENDENCE.

1. On or about the defender, in virtue of a warrant contained in an extract decree from the Sheriff Court Books of at , in an action at his instance against the said C. D. and after the usual procedure, poinded certain effects belonging to the said C. D., and thereafter sold them and recovered the proceeds, which the pursuer avers amounted, after deducting the expense of recovering the same, to £ . The amount decerned for in favour of the defender in said action was £ and expenses. [*If the sum has been recovered in an action of furthcoming, narrate procedure and state sum recovered.*]

2. The pursuer is also a creditor of the said C. D. for £ virtue of an extract decree from the Sheriff Court Books of at dated . [*If diligence has been done on the decree, add, e.g.* In virtue of said extract decree, the pursuer on , after the usual procedure, also poinded said effects, which were thereafter sold by the defender as above stated; *or* arrested said sum in the hands of , which the defender thereafter recovered under said decree of furthcoming.]

3. The said C. D. was rendered notour bankrupt on or about .

4. The date of the poinding of said effects [*or as the case may be*] by

the defender was within sixty days before or four months after the said constitution of notour bankruptcy, and the pursuer is thus entitled to be ranked *pari passu* with the defender on the sum recovered.

5. The defender refuses or delays to account to pursuer for his intromissions with the sum so received by him, and the pursuer avers that on an accounting a sum of at least £ will be found due him by defender.

PLEA IN LAW.

The pursuer being, in the circumstances condescended on, entitled to a *pari passu* ranking on the proceeds of the said sale, decree should be granted, with expenses, as craved.

Beneficiary, By, for Accounting against Executor.—*See* EXECUTOR.

Bequest.—*See* AGRICULTURAL HOLDINGS ACT; TENANCY; AND SUCCESSION.

Bequest, Declarator of, Right to.—*See* DECLARATOR, No. 25.

Bill of Exchange.—*See also* PAYMENT, No. 3; SUSPENSION.

1. By Drawer against Acceptor, for Payment.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of pursuer is—

For payment of £ , the amount of defender's dishonoured acceptance to pursuer, dated , at months' currency, and of £ as the expenses of noting and protesting same, with interest and expenses.

Therefore the pursuer craves the Court—

To grant a decree against defender for payment to pursuer of £ , with interest from , and expenses.

CONDESCENDENCE.

1. By bill dated , drawn by pursuer upon and accepted by defender, and payable months after date, the defender bound himself to pay to the pursuer the sum of £ for value received.

2. The said bill fell due on , when it was dishonoured. The defender is still due and resting-owing to the pursuer the said sum of £ .

PLEA IN LAW.

The defender, as acceptor of said bill, being justly due and resting-owing to the pursuer the sum craved, decree therefor should be granted, with expenses, as craved.

2. By Holder against Drawer and Acceptor.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*] and E. F. [*designation*], jointly and severally, *Defenders*.

The claim of the pursuer is—

For payment, by defenders jointly and severally, of £ , the amount of a bill of exchange, dated , drawn by defender E. F. upon and accepted by defender C. D., at months' currency, indorsed by defender C. D. during its currency to pursuer for value and dishonoured at maturity.

Therefore the pursuer craves the Court—

To grant a decree against defenders jointly and severally for payment to pursuer of £ , with interest from , and expenses; [and to grant warrant, &c.].

CONDESCENDENCE.

1. By bill dated , drawn by the defender E. F. upon and accepted by the defender C. D., at months' currency, the defender C. D. bound himself to pay to the defender E. F. the sum of £ for value received.

2. The said bill was blank indorsed by C. D. to pursuer.

3. The said bill was dishonoured at maturity and still remains unpaid, though both defenders have been applied to for payment.

PLEA IN LAW.

The defenders, as indorser and acceptor respectively of said bill, being jointly and severally indebted to pursuer in the sum sued for, decree therefor should be granted, with expenses, as craved.

Bill of Lading.—*See* SHIPPING, Nos. 9, 21.

Black List.—*See* SLANDER, ACTIONS FOR.

Board and Lodging.—*See* ACCOUNT, No. 3; RELIEF.

Bond, by Grantor of, against Creditor, for Accounting.—*See* ACCOUNTING, No. 8.

Bond of Caution.—*See* RELIEF, No. 2.

Books.—*See* COPYRIGHT; FRIENDLY SOCIETIES; INFRINGEMENT.

Bottomry Bond.—*See* SHIPPING, No. 18.

Breach of Arrestment.—*See* REPARATION, No. 3.

Breach of Contract.—*See* REPARATION, No. 6.

Breach of Interdict.—*See* INTERDICT, BREACH OF.

Breach of Promise.—*See* MARRIAGE, BREACH OF PROMISE OF.

Breach of Sequestration.—*See* SEQUESTRATION.

Bribery, Voiding of Election through.—*See* ELECTIONS, No. 4 (a).

Bridge, Repair of.—*See* LANDS CLAUSES, &C., ACT, No. 16.

Building Contract.—*See* ACCOUNT, No. 4; IMPLEMENT, No. 8; PAYMENT, Nos. 8 and 9.

Building Societies Act, 1874.

(*See also* FRIENDLY SOCIETIES.)

1. To Enforce Award of Arbitrators.

Sheriffdom of at .

A. B. [*designation*], a member of the Building Society, registered under the Building Societies Act, 1874, and having its registered office at , *Pursuer*,

against

The said Building Society, *Defenders.*

The claim of the pursuer is—

For payment of £ , the amount awarded to him by the official arbitrators in a dispute between him and defenders under the Building Societies Act, 1874.

To interpone authority to an award, dated , pronounced by E. F. [*designation*] and G. H. [*designation*], the official arbitrators in a dispute between pursuer and defenders relative to the affairs of said society, ordaining the defenders to pay to the pursuer within eight days the sum of £ , and to ordain the defenders to pay said sum to the pursuer, with interest from , with expenses.

CONDESCENDENCE.

1. The pursuer joined said society as a member on .

2. Under the constitution of said society any dispute arising between a member and the society relative to the affairs of the society must be referred to the arbitration of the said E. F. and G. H.

3. A dispute having arisen between the pursuer and the society relative to , the said dispute was, in terms of the constitution, referred to the amicable decision of the said arbiters.

4. The said arbiters on heard the parties, and thereafter on issued an award in favour of the pursuer, ordaining the defender to pay him the sum craved.

5. The defenders refuse or delay to implement the said award, and the present action is therefore rendered necessary.

PLEA IN LAW.

The said E. F. and G. H. as arbiters appointed under the statutory provisions, having pronounced an award in his favour, pursuer is entitled to decree, with expenses, as craved.

2. For Settlement of a Dispute (ss. 4 and 35).

Sheriffdom of at .

A. B. [*as in No.* 1], *Pursuer*,

against

The said Building Society, *Defenders.*

The demand of the pursuer is—

For settlement by the Court in terms of the Building Societies Act, 1874, of a dispute between pursuer and defenders, relative to the pursuer's right and title to receive payment of a deposit of £ made with said society by defender's late father.

Therefore the pursuer craves the Court—

To hear and determine said dispute, and to find defenders liable in expenses.

CONDESCENDENCE.

1. The pursuer's father was for many years before his death, which occurred on 19 , a member of the defenders' society, and at the date of his death there was standing to his credit a sum of £ which he had deposited with said society in terms of its rules.

2. The pursuer is the only son of his father and his sole executor. He is accordingly entitled to uplift said deposit, and on made application to the society for its payment to him. The society, however, dispute the pursuer's right to uplift said sum, and refuse to pay it over to him.

3. The pursuer, on 19 , applied to the defenders to nominate an arbiter to have the said dispute settled by arbitration in terms of the rules.

4. Forty days have now elapsed since pursuer's said request and the society have not complied with said application. The pursuer is accordingly entitled, in terms of the rules of the statute, to have the dispute determined by the Court.

PLEA IN LAW.

The pursuer having, in terms of the statute, applied to the defenders to settle the dispute which has arisen between them and the pursuer by arbitration, and said application not having been complied with within forty days, the pursuer is entitled to have said dispute heard and determined by the Court, as craved.

3. For Dissolution of Society.

See LIQUIDATION.

Burgh.—*See* POLICE ACTS, AND TOWN COUNCILS ACT, 1900.

Burgh, County and Parish Council Elections.
—*See* ELECTION, AND TOWN COUNCILS ACT, 1900.

Burial Grounds Act, 1855, under.—*See also* DISINTER, PUBLIC HEALTH, AND ECCLESIASTICAL BUILDINGS.

1. To Exclude a Parish from a Burgh (s. 3).

NOTE.—*Under the Burial Grounds Act, parishes are divided into*—(1) *Those lying partly within and partly without burghs, and* (2) *other parishes. When a parish lies partly within and partly without a burgh, any two members of the parish council, or any ten persons assessed for the relief of the poor within the parish, or any two or more householders residing within* 100 *yards of a burial-ground in the parish, may apply to the Sheriff to determine whether the parish is to be held to be a parish within or without the limits of the burgh for the purposes of the Act. Intimation of the application must be made in the Edinburgh Gazette and such local newspapers as the Sheriff may think fitting, and, after hearing any parties having interest, the Sheriff gives his determination. No new application can be presented to the Sheriff till the lapse of five years from the date of his determination.*

Sheriffdom of at .

The Parish Council of , *Pursuers,*

against

The Magistrates and Town Council of , *Defenders.*

The demand of the pursuers is—

For declarator that the parish of is, for the purposes of the Burial Grounds Act, 1855, outwith the limits of the burgh of .

Therefore the pursuer craves the Court—

To find and declare that said parish of is, for the purposes of the Burial Grounds Act, 1855, outwith the limits of the burgh of .

CONDESCENDENCE.

1. The pursuers are the Parish Council of , and the defenders are the Magistrates and Town Council of as representing said burgh.

2. The said parish of is situated partly within and partly

without the said burgh of . The greater part of said parish lies outside the boundaries of said burgh.

3. [*State special reasons for application.*]

PLEA IN LAW.

The majority of the inhabitants of said parish being resident outwith the said burgh, and it being expedient for the statutory purposes that said parish should be held to be outwith its limits, decree should be granted as craved.

2. To Close Existing Burial-Ground (s. 4).

NOTE.—*If a churchyard becomes so overcrowded as to be dangerous to health or offensive or contrary to decency, application may be made under sec.* 4 *of the Burial Grounds Act to the Sheriff for a finding to that effect. The application may be at the instance of two members of the parish council, ten persons assessed for the relief of the poor, or any two or more householders residing within* 100 *yards of the churchyard. Intimation of the application is made in the Edinburgh Gazette and in such papers circulating in the locality as the Sheriff may order. An inquiry is held by the Sheriff not less than ten nor more than twenty days after the petition is presented, at which all parties having interest may appear. If the Sheriff finds any of the allegations of the petitioners proved, he pronounces an interlocutor to that effect, and transmits a copy of it to one of the principal Secretaries of State.*

The actual closing of the graveyard is effected by an Order in Council.

Sheriffdom of at .

A. B. [*designation*] and C. D. [*designation*], householders, residing within 100 yards of the cemetery [*or as the case may be*], *Pursuers,*

against

The Parish Council of [*address*], *Defenders.*

The demand of the pursuers is—

For interdict against the continued use as a place of interment of the cemetery in the parish of .

Therefore the pursuers crave the Court—

To find that the cemetery of the parish of is in a condition which is dangerous to health [*or* offensive, *or* contrary to decency], and to transmit a copy of the interlocutor so finding to the Secretary for Scotland, in terms of the Burial Grounds (Scotland) Act, 1855; and to find any person opposing this application liable in expenses.

CONDESCENDENCE.

1. The pursuers are two of the householders in said parish, resident within 100 yards of the said cemetery, and the defenders are the proprietors thereof.

2. The said cemetery was constructed in the year , and it is now grossly overcrowded and in a condition prejudicial to health, and offensive [*or* contrary to decency].

3. The pursuers have protested against the continued use of said cemetery as a burial-ground, but the defenders persist in allowing it to be so used.

PLEA IN LAW.

The condition of said cemetery being dangerous to health [*or* offensive, *or* contrary to decency], decree should be granted, with expenses, as craved.

3. To Interdict Proposed Burial-Ground (s. 11).

NOTE.—*The burial-ground to be provided by the parish council need not necessarily be within the parish, but no ground may be appropriated as a burial-ground or as an addition to any existing burial-ground nearer than* 100 *yards to any dwelling-house without the consent in writing of the owner, lessee, or occupier of such dwelling-house, and such owner, lessee, or occupier would be entitled to interdict the formation of a burial-ground within the prohibited distance.*

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
The Parish Council of [*address*], *Defenders.*

The demand of the pursuer is—

For interdict against the formation of a proposed burial-ground in the parish of .

Therefore the pursuer craves the Court—

To find, in terms of sec. 11 of the Burial Grounds (Scotland) Act, 1855, that the burial-ground proposed to be formed by the defenders in said parish is within 100 yards of pursuer's dwelling-place and would be dangerous to health: To interdict defenders from proceeding with the formation thereof: To find defenders liable in expenses, and meantime to grant interim interdict.

CONDESCENDENCE.

1. The pursuer's dwelling-house is situated within 100 yards of the piece of ground which defenders propose to acquire from , the proprietor of said parish, and which the defenders propose to form into a burial-ground.

2. The formation of a burial-ground on said site is highly objectionable to pursuer, the windows of whose house abut directly on said ground, and its use as a cemetery would prove dangerous to the health of pursuer, his family, and the occupants of said house.

3. The pursuer has refused his consent in writing to the formation of said burial-ground, and has written the defenders intimating his objections to the use of said ground as a burial-place, but the defenders, notwithstanding, persist in their resolution to acquire said ground and to construct a burial-ground thereon.

PLEA IN LAW.

The proposed burial-ground being within 100 yards of pursuer's house, the pursuer is entitled to decree, with expenses, as craved.

4. For Designation of Burial-Ground (s. 10).

NOTE.—*In the event of a churchyard being closed, the parish council must proceed forthwith to provide a new and suitable burying-ground for the parish; also, on requisition by ten or more ratepayers or any two or more members of the parish council, a special meeting of the parish council must be held to consider the advisability of providing a new burying-ground, and if a majority of the meeting so resolve, a new burying-ground must be provided in the same way as if the existing burying-ground had been closed.*

If the parish council fails to provide a new burying-ground within six months of the order or requisition, any ten or more persons assessed for the relief of the poor, or any two or more members of the council, may apply by summary petition to the Sheriff to designate a suitable portion of ground. The Sheriff, after such inquiry as he thinks proper, may designate a piece of ground, not being part of any policy, pleasure-ground, or garden attached to any dwelling-house, or nearer than 100 *yards to any dwelling-house, without the consent in writing of the owner.*

An appeal lies from the Sheriff's judgment to any Lord Ordinary of the Court of Session. The appeal must be taken within fourteen days of the judgment of the Sheriff, and the Lord Ordinary's decision is final.

Sheriffdom of at .

The Parish Council of , *Pursuers.*

The demand of the pursuers is—

For the designation of a burial-ground, in terms of the Burial Grounds (Scotland) Act, 1855.

Therefore the pursuers crave the Court—

To designate and set apart [*describe ground*] or other ground in the parish of convenient and suitable for a burial-ground, in terms of the Burial Grounds (Scotland) Act, 1855, and particularly of sec. 10 thereof.

CONDESCENDENCE.

1. For some time past, owing to overcrowding [*or as the case may be*], the present burial-ground of the parish of , situated at , has become unsuited to the needs of the parish, and a new burial-ground has become necessary.

2. The pursuers have made inquiries, and they have decided that the piece of ground described in the crave hereof is, by reason of its central position, easy access, and the suitability of its soil, the best site obtainable for the purposes of a burial-ground. In this decision the inhabitants of the parish generally concur.

3. The boundaries of said piece of ground are:—

4. The pursuers propose to charge the following fees, which are reasonable in amount, for interments in said ground.

PLEA IN LAW.

A new burial-ground being required in said parish, and the site proposed by pursuers being the most suitable and the table of fees reasonable, decree should be granted as craved.

5. To Sanction Table of Fees (s. 24).

Sheriffdom of at .

The Parish Council of , *Pursuers.*

The demand of the pursuers is—

For approval of the table of fees, hereto attached, for interments in the cemetery.

Therefore the pursuers crave the Court—

To approve of said table of fees: To authorise pursuers to fix and receive said fees: To print and publish said table of fees as applicable to said cemetery, in terms of sec. 24 of the Burial

Grounds (Scotland) Act, 1855, and to find any person opposing this application liable in expenses.

CONDESCENDENCE.

The pursuers are the proprietors of said cemetery, and they desire the authority of the Court to fix and receive the fees specified in the said table of fees for interments in said cemetery, and to print and publish the same as applicable to said cemetery, all in terms of the said statute. The said fees are reasonable in the circumstances.

PLEA IN LAW.

The fees sanctioned by the said table of fees for interments in said cemetery being reasonable, pursuers are entitled to decree as craved.

Call.—*See* INTERDICT; PAYMENT; RELIEF, No. 3.

Canvassing, Interdict against.—*See* INTERDICT, No. 12.

Cargo.—*See* FREIGHT; INTERDICT; SHIPPING, No. 9.

Carriages and Services, Commutation of.—(CONVEYANCING ACT, 1874, ss. 20, 21).

NOTE.—*Where carriages and services are still exigible by the superior of a feu, these may now be commuted into an annual payment in lieu thereof, under secs.* 20 *and* 21 *of the Conveyancing Act,* 1874. *Parties may either agree as to the value to be put on such services, in which case the commutation is carried out by the registration in the appropriate register of sasines of an agreement in the form of Schedule G annexed to the Act, or either party may apply to the Sheriff to determine the value of such carriages and services. In this latter case an extract of the Sheriff's judgment is recorded in the register of sasines. The effect of the registration in both cases is that the annual value, so ascertained, is deemed to be feu-duty with all the legal qualities thereof, and forms an addition to any already existing feu-duty.*

The Sheriff's decision is final and not subject to review.

Wherever a money payment has been received in lieu of the carriages and services for a period of five years, the amount of this payment is deemed to be the value of such carriages and services in all time thereafter.

1. By Superior.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For commutation into a feu-duty of the carriages and services exigible from defender, in terms of secs. 20 and 21 of the Conveyancing (Scotland) Act, 1874.

Therefore the pursuer craves the Court—

To determine the annual value of the services specified in a feu-charter dated , and recorded , exigible by pursuer as immediate lawful superior of the lands of from the defender as proprietor of the *dominium utile* of said lands: To find and declare the *dominium utile* of said lands from and after the term of liable in payment to the pursuer of the annual value so determined, payable by equal instalments at Whitsunday and Martinmas; that the said sum shall be deemed to be and shall be a feu-duty [*or* an additional feu-duty over and above the existing feu-duty of £] with all the legal qualities thereof, and the right to the said carriages and services shall be discharged from and after said date; and to grant warrant for registration of the decree hereon in the Division of the General Register of Sasines applicable to the county of , all in terms of secs. 20 and 21 of the Conveyancing (Scotland) Act, 1874; and to find defender liable in expenses in the event of his opposing this application.

CONDESCENDENCE.

1. The pursuer is the proprietor and immediate lawful superior of the lands of described in the crave hereof, conform to [*pursuer's title*] herewith produced, and the defender is the proprietor of the *dominium utile* of said lands.

2. The said lands were feued by , the pursuer's author, by feu-charter dated , and recorded .

3. By said feu-charter it is provided [*state provision as to carriages and services*].

4. The pursuer is desirous of having said carriages and services commuted into an annual payment, in terms of secs. 20 and 21 of the Conveyancing (Scotland) Act, 1874.

5. [The said lands are subject to an existing feu-duty of £ , payable half-yearly by equal instalments at Whitsunday and Martinmas.]

PLEA IN LAW.

Pursuer, being desirous of commuting said carriages and services, is entitled, in terms of the statute, to decree, with expenses, as craved.

2. By Vassal.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For commutation into a feu-duty of the carriages and services exigible from the pursuer, in terms of secs. 20 and 21 of the Conveyancing (Scotland) Act, 1874.

Therefore the pursuer craves the Court—

To find and declare that the annual value of the services specified in a feu-charter dated , and recorded , exigible by the defender as immediate lawful superior of the lands of from the pursuer as the proprietor of the *dominium utile* of said lands, is £ ; that the *dominium utile* of said lands from and after the term of shall be liable annually in payment to pursuer of the said sum, payable by equal instalments at Whitsunday and Martinmas in each year; that said sum shall be deemed to be and shall be a feu-duty [*or* an additional feu-duty over and above the existing feu-duty of £] payable from said lands, with all the legal qualities thereof, and the right to such carriages and services shall be discharged from and after said date; and to grant warrant for the registration of the decree to follow hereon in the Division of the General Register of Sasines applicable to the county of ; and to find the defender liable in expenses in the event of his opposing this application.

CONDESCENDENCE.

1. The pursuer is the proprietor of the *dominium utile* of the said lands, conform to [*state title*], and the defender is the immediate lawful superior thereof.

2. By feu-charter dated , and recorded , by

virtue of which pursuer holds said lands of the defender, it is provided [*state provision as to carriages and services*].

3. For the last five years pursuer has paid defender £ yearly in lieu of said carriages and services. The receipts for said payments are herewith produced.

4. The pursuer desires to have said carriages and services commuted, and makes this application in terms of secs. 20 and 21 of the Conveyancing (Scotland) Act, 1874.

5. [There is an existing feu-duty of £ per annum, payable half-yearly at Whitsunday and Martinmas, exigible in respect of said lands.]

PLEA IN LAW.

The pursuer, being desirous of commuting said carriages and services, and the defender having for five years accepted £ in lieu of said carriages and services, pursuer is entitled, in terms of the statute, to decree, with expenses, as craved.

Carry Back.—*See* SEQUESTRATION; MINUTE.

Casualties, of Superiority.

NOTE.—*The vassal in any feu created prior to the Conveyancing Act is entitled to redeem the casualties incident to his feu. Failing agreement, all proper casualties,* i.e. *such as do not consist of a fixed amount, either in money or in fungibles, stipulated to be paid at fixed periods, may be redeemed by the proprietor of the feu on the terms fixed by sec.* 15 *of the statute, viz. Where the casualties are exigible only on the death of the vassal on payment of the amount of the highest casualty estimated as at the date of the redemption, plus* 50 *per cent.; and where the casualties are exigible on each sale or transfer of the property on payment of two and a half times the estimated amount of the casualty. All casualties due at the time must be first paid.*

Special provision is made for the case where the casualty consists of an annual sum payable for each year from the date of the payment of the last casualty.

On payment of the amount so ascertained, the lands are discharged of the casualties by the execution and recording of a discharge in the form of Schedule F.

Where there are heritable debts affecting the superiority, the consent of the creditors in the securities must be obtained.

1. By Vassal for Redemption (Conveyancing (Scotland) Act, 1874, s. 15).

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator of redemption of the casualties of superiority payable by pursuer to defender.

Therefore the pursuer craves the Court—

To find and declare, in terms of sec. 15 of the Conveyancing (Scotland) Act, 1874, that pursuer is entitled to redeem the casualties of superiority to become hereafter payable to defender in respect of pursuer's lands; that £ is the redemption value of the highest casualty exigible from said lands: To ordain the defender, on receiving payment of said sum, or of such sum as may be found to be the redemption value of said casualties, with an addition of 50 per cent., to execute and deliver to pursuer, at pursuer's expense, a valid discharge of said casualties; or *alternatively*, in the event of defender desiring to convert said redemption money into an annual payment, equal to 4 per cent. upon the capital value thereof, to ordain the defender, at pursuer's expense, to execute and deliver to pursuer a memorandum in terms of sec. 17 of said Act, with expenses.

CONDESCENDENCE.

1. The pursuer is proprietor of the lands [*describe them*], and is vested in said subjects conform to [*pursuer's title*]. The defender is proprietor of the estate of , and superior of the pursuer's said property.

2. In terms of the feu right under which the pursuer holds the said lands, a composition of a year's rent is payable on the death of the last entered vassal.

3. The whole casualties due to defender at the date of raising the present action have been paid, and the pursuer now desires to redeem future casualties exigible from said subjects, in terms of the statute.

4. The sum payable by pursuer is, in terms of the statute, the highest casualty exigible from the said subjects; that is, one year's rent (subject to the usual deductions), with an addition of 50 per cent.

5. The following is a statement of the rental and deductions, shewing the amount payable as redemption money:—

6. The pursuer has tendered said sum to defender, but he declines to accept same.

PLEAS IN LAW.

1. The pursuer being entitled to redeem the casualties of superiority of the subjects before described, upon payment of the amount of the highest casualty estimated as at the date of redemption, with an addition of 50 per cent., decree should be pronounced as craved, with expenses.

2. The pursuer being willing and having offered to pay the defender the whole redemption money to which he is entitled, the defender is bound to grant a discharge of the casualties of superiority; or alternatively, in the event of his electing that said payment should be converted into an annual sum, to concur in granting and delivering a memorandum in terms of sec. 17 of the Conveyancing (Scotland) Act, 1874.

2. By Superior for Payment.

Sheriffdom of at .

A. B. [*designation*], immediate lawful superior of the lands of , *Pursuer*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment of a casualty of £ .

Therefore the pursuer craves the Court—

To find and declare, in terms of subsec. 4 of sec. 4 of the Conveyancing (Scotland) Act, 1874, that a casualty of £ , being one year's rent of said lands, became due and payable to pursuer by defender on , the date of the death of E. F. [*designation*], the vassal last entered in said lands [*or* the date of defender's infeftment in said lands]; and to grant a decree against the defender for payment to the pursuer of £ , or such other sum as may be found to be a year's rent of said lands, with interest from said date, and expenses.

CONDESCENDENCE.

1. The pursuer's title as immediate lawful superior of the lands of , of which the defender is the present proprietor, was made up by disposition in his favour granted by , dated

, and recorded in the Division of the General Register of Sasines applicable to the county of on .

2. The defender is the present proprietor of said lands by virtue of [*his acquisition of property and registration of title*].

3. E. F., who died on , was the vassal last entered in said lands, and on his death a casualty of £ became payable to pursuer as immediate lawful superior of said lands.

4. In terms of feu-charter by , in favour of , dated , and instrument of sasine following thereupon, recorded in the said Division of the General Register of Sasines on , which form the defender's title to said lands, the reddendo for the said lands is declared to be . [*Where the entry is untaxed, state this, and set forth the rent of the lands and deductions therefrom, bringing out sum concluded for.*]

5. The defender has, in terms of the statute, repeatedly called on defender to make payment of said casualty, but he refuses or delays to do so.

PLEA IN LAW.

The casualty sued for being due by defender to pursuer, decree should be granted, with expenses, as craved.

Cattle, for Damages for Non-delivery of.—*See* REPARATION, No. 5.

Cattle, for Damages for Delay in Transit.—*See* REPARATION, No. 5.

Cattle, for Warrant to Sell Stray.—*See* WARRANTS.

Caution.—*See also* LAWBURROWS; REMOVING.

Caution, for Motion for Pursuer to Find.—*See* MOTION.

Caution, for Restriction of, by Executor.—*See* EXECUTOR.

Cautioner.—*See* PAYMENT; RELIEF, No. 2.

Caveat.

NOTE.—*This is a document lodged by a party who is apprehensive that proceedings may be taken against him, the object being to prevent the grant of any writ or warrant until after the objector has been heard. The most common case is where there is reason to fear an application for suspension or interdict or sequestration. In these cases a caveat prevents a sist of execution or an interim interdict, or the order for intimation of a sequestration petition, until the respondent has been heard. Caveats are also used in sequestrations for rent, applications for the appointment of executors and service of heirs, the issue of process caption, and in general in any application which may proceed* ex parte.

They may be put up by any person interested, and should be lodged in every Court which has jurisdiction to grant the order objected to.

Caveats endure only for a month, but they can be renewed by the presenter dating them afresh.

1. Against Suspension.

Should any application for suspension be presented [at the instance of A. B. [*designation*]], against C. D. [*designation*], it is requested that notice be given to the subscriber before any order is pronounced thereon.

[*Signed by C. D. or his agent.*]

[*Place and date.*]

2. Against Interdict against Building.

Should any application be presented at the instance of any person for interdict or interim interdict against the subscriber proceeding with the erection of buildings at , it is requested that notice thereof be given to the subscriber, who will shew cause why the application should not be granted.

3. Against Confirmation or Decerniture.

Should any inventory of the personal estate of the deceased C. D. [*designation*] be lodged, or any application for the appointment of executor to him be made, it is requested that notice thereof be given to the subscriber, who will shew cause why the same should not be received or granted.

4. Against Sale under a Poinding.

Should any application be presented at the instance of A. B. [*designation*] or anyone representing him or on his behalf against C. D. [*designation*] for warrant to sell the furniture and effects within the

dwelling-house No. Street, , on , under a warrant proceeding upon a decree of the Sheriff of , dated , obtained in an action at the instance of the said A. B. against the said C. D., it is requested that [*ut supra*].

5. Against Interdict against Sale under a Poinding.

Should any application be presented at the instance of A. B. [*designation*] or of anyone representing him or on his behalf against C. D. [*designation*] for interim interdict against selling or disposing of the furniture and effects within the dwelling-house of the said A. B. at No. Street foresaid, poinded by the said C. D., it is requested that [*ut supra*].

6. Against Sequestration in Bankruptcy.

Should any application be presented for sequestration of the estates of A. B. [*designation*], [*or* of the estates of A. B. & Co., or A. B. [*designation*], or C. D. [*designation*], the individual partners thereof as such partners or as individuals] it is requested that [*ut supra*].

7. Against Sequestration for Rent.

Should any petition for sequestration or for warrant to carry back hypothec be presented at the instance of A. B. [*designation*] against C. D. [*designation*] in respect of the premises No. Street, , it is requested [*ut supra*].

Cemetery.—*See* CHURCHYARD; BURIAL GROUNDS ACT; DISINTER.

Cessio.

NOTE.—*Cessio is only competent in the Sheriff Court, and is practically confined to very small estates, as where they exceed* £200 *a cessio is almost certain to be converted into sequestration under sec.* 11 *of the Bankruptcy and Cessio Act,* 1881. *There is no qualifying amount for the petitioning creditor's debt. As cessio is still regarded as a privilege to the debtor, it will not always be granted. It has been refused where the debtor has no assets* (*Ross,* 13 *R.* 207), *or very trifling assets* (*Reid,* 17 *R.* 757). *As cessio does not convey* acquirenda *to the trustee, a second cessio may be granted, although the first is still pending, if there be assets. The grant of cessio when applied for by a debtor may be, and frequently is, made conditional, especially in the case of debtors in receipt of annuities or*

stipends (*Simpson*, 16 *R.* 131). *The estates of a deceased debtor cannot be wound up in a cessio.*

1. Application for, by Debtor.

Sheriffdom of at .

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For *cessio bonorum.*

Therefore the pursuer craves the Court—

To find the pursuer entitled to the benefit of *cessio bonorum* in terms of the Cessio Acts: To appoint a trustee who shall take the management and disposal of pursuer's estates; and to direct that the expenses of his application and of the disposition *omnium bonorum* shall be paid *primo loco* out of pursuer's estates.

CONDESCENDENCE.

1. The pursuer, who carries on business at , as , has been rendered notour bankrupt by insolvency concurring with the expiry of a charge, dated , upon a decree of this Court decerning against him for £ , with interest and expenses, obtained in an action against him by C. D. [*designation*].

2. The pursuer, who is unable through misfortunes and losses to carry on his business, and to pay his debts, which amount to £ , is willing to surrender his estates for behoof of his creditors, a list of whom is attached hereto.

PLEA IN LAW.

The pursuer, being notour bankrupt and willing to surrender his estates for behoof of his creditors, is entitled to decree as craved.

2. Application for, by Creditor.

NOTE.—*By A. S., 22nd December* 1882, *a creditor, before presenting a petition for cessio, must give the debtor notice of his intention to do so not less than six or more than fourteen days before the date of presentation. This notice must state,* (1) *the amount of the debt, either by reference to the charge or by stating the sum or sums due; and* (2) *that the petition will (failing payment) be presented,* (a) *on a certain day,* (b) *to a certain Court. It may be given by the creditor, his agent, a messenger-at-arms, or a sheriff officer, and may be posted in a registered letter to the debtor's known address. If desired, it may be subjoined to or given at the same time as a charge for*

payment. If posted, the six or fourteen days are reckoned from twenty-four hours after posting. A copy of the notice, with a certificate of delivery or posting signed by the person who delivered or posted it, and if posted with the post office receipt attached, must be produced with the petition. The debtor may personally, or by his agent, appear and oppose the granting of a first deliverance, or, apparently in certain circumstances, may apply for interdict against the presentation of the petition (*Dunbar & Son*, 4 *S. L. T.* 54; *but see Adam & Sons*, 10 *R.* 670, *per L. P.*).

Sheriffdom of at .

A. B. [*designation*], a creditor of C. D. [*designation*], *Pursuer*,

against

The said C. D., *Defender*.

The demand of the pursuer is—

For a decree of *cessio bonorum* against the defender.

Therefore the pursuer craves the Court—

To ordain the defender to execute a disposition *omnium bonorum* for behoof of his creditors, in terms of the Cessio Acts: To appoint a trustee to take the management and disposal of pursuer's estates, and to direct that the expenses of this application and of the disposition *omnium bonorum* shall be paid *primo loco* out of the pursuer's estate; [and meantime to grant warrant to officers of Court to take possession of and put under safe custody any money, bonds, bills, cheques, or drafts, or other moveable property belonging to or in the possession of the defender, and, if necessary for that purpose, to open shut and lockfast places, and to search the dwelling-house and person of the defender]; and in the event of defender paying pursuer's debt before decree hereon, to find the defender personally liable to pursuer in expenses.

CONDESCENDENCE.

1. The pursuer is a creditor of defender for £ , conform to extract decree of the Sheriff of , dated [*or as the case may be*], herewith produced.

2. The defender, whose domicile is within the jurisdiction of the Court, has been rendered notour bankrupt by insolvency, concurring with the expiry of a charge for payment of the sum contained in said decree herewith produced.

3. Notice of the pursuer's intention to present this application on was duly given to defender conform to certificate herewith produced.

4. The following is a list of the creditors, or those claiming to be creditors, of defender, so far as known to pursuer:—

[5. The pursuer avers that the bankrupt has recently received considerable sums of money in cash and bank-notes, and is possessed of a valuable gold watch and other jewellery, which are still in his possession or on his person, and may not be forthcoming for payment of his debts.]

PLEA IN LAW.

The defender being notour bankrupt and pursuer being his creditor, decree should be pronounced as craved.

3. By Debtor for his Discharge.

NOTE.—*A debtor may apply to be discharged*—(1) *after six months from the date of cessio, with concurrence of a majority in number and four-fifths in value of his creditors;* (2) *after twelve months, of a majority in number and two-thirds in value;* (3) *after eighteen months, of a majority in number and value; and* (4) *after two years, without any consents.*

Besides the consents, which must be in writing, there must be produced with the petition evidence that five shillings per pound has been paid or secured, or that the failure to do so has arisen from causes for which the debtor is not responsible, and a report by the trustee on the debtor's conduct.

It does not seem necessary that the bankrupt should make a declaration as in sequestration, the section (147) *in the* 1856 *Act not being incorporated by the Act of* 1881.

Contrary to the rule in sequestration, the date of a cessio is that of the decree, not of the application for cessio.

Sheriffdom of at .

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For his discharge in cessio.

Therefore the pursuer craves the Court—

[To find that the failure of pursuer's estate to pay a dividend of 5s. in the £ has arisen from circumstances for which he cannot be justly held responsible, and] to find pursuer entitled to a discharge from all debts and obligations contracted by him or for which he was liable at the date of cessio of his estates being granted, and to grant such discharge accordingly.

CONDESCENDENCE.

1. On , on the application of pursuer [*or* of C. D. [*designation*], a creditor of pursuer] decree of cessio of pursuer's estates was awarded by the Sheriff of , and E. F. was appointed trustee, in terms of the Cessio Acts.

2. months have elapsed since the date of said decree, and pursuer desires to be discharged of all debts due by him prior to said decree. A majority in number and four-fifths in value [*or as the case may be*] of the creditors who have produced oaths, and claims to be ranked on said estate, have concurred in this application, conform to minute of concurrence and certificate by the said trustee, herewith produced. [*or* Two years have now elapsed from the date of said decree, and pursuer desires to be finally discharged from all his debts contracted by him prior thereto.]

3. The trustee has prepared a report, herewith produced, on pursuer's conduct, and how far he has complied with the statutory provisions.

4. A dividend of 5s. in the £ has been paid to the creditors out of pursuer's estate [*or* security for the payment of a dividend of 5s. in the £ to the creditors has been found to the satisfaction of pursuer's creditors].

[*Or if no dividend, or a dividend of less than* 5s. *in the* £ *has been paid, say:* No dividend [*or* a dividend of in the £] has been paid out of the estate of pursuer, but the failure to pay a dividend of 5s. in the £ has arisen from circumstances for which the pursuer cannot justly be held responsible.]

PLEA IN LAW.

The pursuer, having surrendered his estates to his creditors [and the failure to pay 5s. in the £ having arisen from circumstances for which he cannot justly be held responsible], is entitled to decree as craved.

Note.—The forms applicable to the discharge of the trustee, the examination of the debtor and of witnesses, in sequestration, may be adapted to apply, *mutatis mutandis*, to cessio.

Charging Order.—*See* MOTION, No. 8.

Cheque.—*See* BILL OF EXCHANGE.

Child.—*See* ALIMENT; DELIVERY; GUARDIANSHIP; REGISTRATION.

Children, Custody of.—*See* DELIVERY; GUARDIANSHIP.

Choosing Curators.—*See* CURATORS.

Church.—*See also* APPEALS; MANSE; SEATS (CHURCH).

1. For Allocation of Seats in Enlarged or Rebuilt Parish Church.

NOTE.—*Where the heritors fail to come to an amicable arrangement as to the allocation of sittings in the church, such allocation is made by the Sheriff. The usual procedure is that a committee of heritors is appointed, with power to apply for judicial allocation. On presentation of the petition, intimation is made by advertisement, and by notice from the pulpit, of a diet when all parties interested may meet the Sheriff. Thereafter a remit is made to a man of skill to prepare a plan and scheme of allocation. After the preparation of this scheme, another diet is fixed at which all interested parties are heard thereon, and the scheme finally approved, with or without modification.*

By long usage the minister is entitled to a pew in all parish churches. In the case of a quoad sacra *church, one pew must be provided for the minister and one for the officiating elders. A proportion of the sittings in the church, not exceeding in all one-tenth, must be set apart as free seats for all parties frequenting the same.*

Sheriffdom of at .

A. B. [*designation*] and others, members of committee of heritors of the parish of , and as such representing the heritors, *Pursuers.*

The demand of the pursuers is—

For allocation of the seats in the parish church of as now enlarged and reseated.

Therefore the pursuers crave the Court—

To divide, allocate, and apportion the seats in the parish church of , as now enlarged and reseated, among the heritors of said parish according to their respective rights and interests, on the basis of the plan, lists of heritors, and valued rents herewith produced, after setting apart pew No. for the minister of the parish and pew No. for the officiating elders, and pews, containing in all seats, for the poor:

To remit to an architect or other approved person to prepare and lodge in the hands of the clerk of Court a scheme showing the whole sittings in the said church, allowing lineal

inches for each sitting, after deducting the foresaid seats and setting forth the number of sittings or extent of sitting accommodation to which the heritor or heritors of each property separately entered in said list is or are entitled to according and in proportion to the valued rent thereof as stated in said list: on considering such report, to appoint the pursuers and all parties entitled to participate in the division of said church, or their factors, mandatories, or agents, to attend at the said church on such day as the Court may appoint, and on said day to divide, allocate, and apportion the sittings in the said church among the heritors in the order in which they are entitled to the same; and to ratify and approve the whole proceedings and to interpone the authority of the Court thereto; and to find the heritors of the said parish liable in the expenses of this application and consequent procedure, in proportion to their respective valued rents as set forth in said list.

CONDESCENDENCE.

1. The pursuers are members of a committee of the heritors of the parish of appointed at a meeting of said heritors on , with power to apply to the Court for judical allocation of the sittings in the church of said parish.

2. The said church has recently been enlarged and reseated, prior to which enlargement the sittings therein were allocated among the valued rent heritors of the said parish. A plan of the church as so enlarged and reseated, together with a list of the valued rent heritors of the parish and the valuation of their respective lands, is herewith produced.

3. The heritors of the said parish have been unable to agree upon an amicable allocation of the church as reseated, and the present application for a judicial allocation has been rendered necessary.

PLEA IN LAW.

The said parish church having been enlarged and reseated, and the heritors of the parish having been unable to agree as to the allocation of the seats therein, pursuers are entitled to decree, with expenses, as craved.

2. For Allocation of Free Seats in quoad sacra Church.

Sheriffdom of at .

A. B. [*designation*], *&c.*, *Pursuers.*

The demand of the pursuers is—

For allocation of the free seats in the *quoad sacra* church of .

Therefore the pursuers crave the Court—

To determine what portion of the sittings, not exceeding in all one-tenth of the whole sittings in the *quoad sacra* church of , shall be set apart as free seats for the use of all persons frequenting the said church, in terms of 8 & 9 Vict. c. 44, sec. 9.

CONDESCENDENCE.

1. [*Set out disjunction, designation of district, erection as* quoad sacra *parish, and erection of church.*]

2. The said church contains sittings. The population of the district annexed to said church is about , and consists chiefly of . The pursuers believe that one-twentieth [*or as the case may be*] will be a sufficient proportion of the sittings in said church to set apart as free seats.

PLEA IN LAW.

The said church having been erected into a *quoad sacra* parish church, and a portion of the sittings therein falling to be set apart as free sittings, decree should be granted as craved.

Churchyard. — *See* APPEALS; BURIAL GROUNDS ACT; DISINTER.

Citation.

NOTE.—*As correct citation of the parties is the very foundation of any action, it is absolutely essential that it should be accurate both in form and substance.*

The terms of the Citation Amendment Act, 1882, *permit in citation by registered letter considerable latitude in form, provided the essential requirements are complied with. But in both citation by post and messenger the utmost accuracy should be aimed at. Agents are in the habit of relying on the messenger or sheriff-officer, but it should not be forgotten that the agent is liable to his employer for all that may follow on an erroneous citation, and in many cases also to the party injured by the wrongous use of diligence. The executions of citation should therefore always be scrutinised with the greatest care.*

There is no statutory form for the schedule of citation, but custom has evolved a well-recognised style which should be adhered to. The provisions of the 1882 *Act seem to indicate that a simpler form would suffice for postal citation, but the practice is to use the old form for the schedule, whether the service be by post or messenger.*

The form of execution where the service is by messenger is also the outcome of custom, not statute; but that for postal citation "may be" and always is in the form annexed to the Act. It must be accompanied by the post-office receipt for the registered letter.

For the persons on whom service should be made and the modes of serving, reference may be made to the "Practice."

The Lord Advocate has directed that citations for him in his official capacity should be served at the Exchequer Office, and not at his private residence.

1. Of a Party.

A. B., defender, before designed, you are hereby served with the foregoing copy, writ, and deliverance thereon, and, in terms of said deliverance, cited on seven days' *inducie*, reckoned from twenty-four hours after posting hereof. This I do at on the day of 19 [between the hours of and noon].

2. Of a Witness or Haver.

A. B. [*designation*], you are hereby cited to attend in the Sheriff Court of on the day of nineteen hundred and years, at o'clock noon, within the Sheriff Court House , to give evidence for the in the action at the instance of , pursuer, against , defender, and that under a penalty of forty shillings if you fail to attend [and you are required to bring with you [*describe documents*]]. This notice dated and posted at this day of nineteen hundred and years [between the hours of and noon] by me.

3. Of the Crown or Public Department.

See 20 & 21 Vict. c. 44. *The Public Departments which may be cited by calling the Lord Advocate are declared to be—the Treasury, the War Office, the Post Office, Inland Revenue, Customs, Woods and Forests, Public Works, and Committee of Privy Council on Trade and Foreign Plantations.*

4. Corporations and Town Councils.

Corporations were by custom cited by serving a copy on the preses of a meeting of the body at such meeting.

By the Town Councils (Scotland) Act, 1900, *sec.* 5, *however, it is enacted that a town council . . . shall be designated by the corporate name of "the provost* [*or lord provost* (*sec.* 6)], *magistrates, and councillors" of*

the burgh ; and sec. 9 *provides that "the town council may sue and be sued in their corporate name, and service on them of all legal processes and notices shall be effected by service on the town clerk."*

As regards other corporate bodies, they may still be cited at a meeting. In Glasgow Corporation, 25 *R.* 690, *however, service of an arrestment on a servant of the corporation was held good, and in several other cases the title to sue of and therefore service on the officials has been sustained. See also dicta in Boyd,* 10 *S. L. T.* 430.

5. Before Commissioner.

See COMMISSIONER.

6. Before Arbiter.

See ARBITRATION.

7. Petition for Warrant to Cite Witnesses and Havers before Presbytery.

Sheriffdom of at .

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For warrant to cite witnesses and havers at pursuer's instance to attend before the Presbytery of X. at such diets as the said presbytery may appoint for hearing evidence in the libel presently depending before said presbytery against the pursuer.

Therefore the pursuer craves the Court—

To grant warrant for the citation of witnesses and havers on behalf of the petitioner, to appear before the Presbytery of X. at such places and on such dates as the said presbytery may appoint as diets in the libel presently depending before the said reverend Court against the petitioner, in order to be examined as witnesses and havers for the petitioner thereanent; as also to bring with them and produce all such documents and books in their possession as they may be cited to produce, and in the event of any of them failing to appear after due citation, to grant warrant for the issue of letters of second diligence at the petitioner's instance against such parties.

CONDESCENDENCE.

1. [*Narrate the application to presbytery, and their determination to proceed.*]

2. The said reverend Court have fixed at as

a diet for leading evidence in the said matter. In order to secure the attendance of witnesses and havers on his behalf, the petitioner is under the necessity of making the present application.

PLEA IN LAW.

The petitioner being entitled to compel the attendance of witnesses and havers on his behalf, warrant should be granted as craved.

Claim.—*See* MULTIPLEPOINDING.

Coal, Interdict against Working.—*See* INTERDICT, No. 14.

Cognitionis causa tantum.—*See* CONSTITUTION.

Collation.

By Heir-at-Law against Executors, and for Accounting and Conveyance.

Sheriffdom of at .

A. B. [*designation*], eldest son and heir-at-law of the deceased G. B. [*designation*], *Pursuer*,

against

C. B. and D. B. [*designations*], younger sons and heirs *in mobilibus* and executors-dative of the said deceased G. B., *Defenders*.

The demand of the pursuer is—

For collation with defenders.

Therefore the pursuer craves the Court—

To find and declare that pursuer is entitled, and defenders bound, to collate into one estate the whole heritable and moveable estate of the said G. B., and that such collated estate is divisible in three equal shares between pursuer and defenders: To ordain the defenders to produce a full account of the moveable estate of the said G. B., and of their intromissions therewith; upon pursuer making up a title to the heritable estate and conveying to each of the defenders a valid disposition *pro indiviso* of one-third thereof, to ordain the defenders to complete

titles to the said moveable estate and, so far as not realised, to convey to pursuer one-third thereof, under deduction in each case of a proportionate share of all proper and necessary charges; and, failing such accounting and collation, to grant a decree against the defenders, jointly and severally, for payment to the pursuer of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The said G. B. died at on the intestate, and was survived by pursuer, his eldest son, and the defenders, his younger sons. G. B. died possessed of heritable and moveable estate.

2. The pursuer, as G. B.'s eldest son, is the heir-at-law of deceased, and as such has right to the deceased's whole heritable estate. The defenders are the deceased's heirs *in mobilibus*, and on were confirmed as his executors-dative by the Sheriff of .

3. The defenders, who resided with deceased, have possessed themselves of the whole of his moveable estate and effects, which are of considerable value, including [*state any special estate*]. Deceased's heritable property consists of , which is valued at .

4. The pursuer desires to collate the heritable and moveable estate of the said G. B., but the defenders decline either to collate the moveable estate, or to furnish any information as to its nature and value.

5. Pursuer avers that if the heritable and moveable estate of the deceased were collated, a sum of not less than £ would be found due to him by defenders.

PLEA IN LAW.

The pursuer being entitled, and the defenders bound, to collate the whole heritable and moveable estate of their deceased father, decree should be granted, with expenses, as craved.

Colliery Owner, by, for Royalties Due.—*See* PAYMENT.

Collision.—*See* REPARATION.

Commissary.—*See* EXECUTOR.

Commission, for Payment of a.—*See also* ACCOUNTING, No. 7.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender.*

The claim of the pursuer is—

For payment of £ as commission on a sale effected by pursuer of defender's yacht.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The defender is the owner of the yacht presently laid up in Gourock Bay.

2. On , at an interview in pursuer's office, defender informed pursuer that he was anxious to dispose of said yacht, and that in the event of pursuer being able to effect a sale thereof he would pay him the usual and customary commission, *i.e.* per cent. on the price.

3. On or about pursuer introduced Mr. E. F. [*designation*] to defender as a likely purchaser of said yacht.

4. The said E. F. on or about purchased said yacht from defender for £ . Said sale was effected directly through and in consequence of pursuer's introduction of E. F. to the defender.

5. The pursuer's commission on said sale amounts to £ , the sum sued for, but defender refuses to pay said commission or to recognise that the sale of said yacht was effected through pursuer's agency.

PLEA IN LAW.

Defender's yacht having been sold through pursuer's agency, pursuer is entitled to decree, with expenses, as craved.

Commission, Agent on, for Accounting against Principals.—*See* ACCOUNTING, No. 7.

Commission, Proof on.—*See also* MINUTE; MOTION.

NOTE.—*Evidence may be taken on commission in three cases, viz. where the witnesses are resident beyond the Sheriff's jurisdiction; or, though resident*

within the jurisdiction, reside at some place remote from the seat of the Court; or where they are by reason of illness, age or infirmity unable to attend the diet of proof. In other cases, the granting of a commission, even with the consent of the parties, is incompetent (*Byres* v. *Forbes*, 4 *M.* 388; *Stewart* v. *Grant*, 5 *M.* 736).

In addition to the cases before mentioned, it is also competent for the Sheriff to grant a commission to take proof to lie in retentis. *The cases in which such a commission may be issued are*—(1) *when a witness is about to leave Scotland, or* (2) *when the testimony of the witness is in danger of being lost on account of age or ill-health, or for any other reason.*

The application is in practice made by minute in the process, and may be made either before or after the closing of the record. The minute should set forth the grounds on which the application is made, and, when it is presented before the closing of the record, it should perhaps contain a statement of the facts as to which the witness is to be examined; though this seems unnecessary, and is in disuse in similar applications in the Court of Session.

The evidence so taken can only be used if the witness is unable to appear at the trial; but to save expense it is usual, with the consent of both parties, to hold the deposition as the evidence in the cause.

1. Minute for Commission to take Evidence to Lie "In retentis."

Minute for A. B. [*designation*], in action at the instance of the said A. B., *Pursuer*,
against
C. D. [*designation*], *Defender*.

E. F., for the pursuer, stated to the Court that G. H., master, and J. K., mate, both of the s.s. *X.*, at present taking in cargo in the harbour of Y., are material witnesses for the pursuer in this action. The said s.s. *X.* is to leave Y. on , and as the said G. H. and J. K. are foreigners, who may not return to this country, he respectfully moved the Court to grant commission to take the evidence of the said G. H. and J. K., to lie *in retentis*.

VARIATION.

In Case of Aged and Infirm Witness.

The said is years of age, and is at present in an extremely precarious condition of health, as appears from the medical certificate herewith produced, so that there is great danger that his testimony will be lost.

2. Witnesses Resident Abroad.

NOTE.—*Where a material witness for either of the parties is resident abroad, and his evidence cannot be obtained on commission, the party to the action desiring his evidence may apply to the Sheriff, under A. S., 2nd February* 1893, *for a letter of request addressed to the judge or judges of the tribunal within whose jurisdiction the witness resides. The application is made by a minute in the form of Schedule A annexed to the Act of Sederunt.*

On the application being granted, interrogatories are adjusted, and thereafter a letter of request along with the interrogatories is forwarded by the Sheriff-Clerk to the Secretary of State for Foreign Affairs, with a request for their transmission to the foreign tribunal and subsequent return to him.

(1) MINUTE.

[*A. S., 15th March* 1890, *Sched. A.*]

Minute for A. B. [*designation*], pursuer [*or* defender], in the action at the instance of the said A. B., *Pursuer*,

against

C. D. [*designation*], *Defender.*

E. F. for the pursuer [*or* defender] stated that the following persons, viz.: [*state names and designations, including places of residence of proposed witnesses*] are material witnesses for the pursuer [*or* defender] in support of the claim [*or* defence] in this action, and he prayed the Court to issue a letter of request addressed to [*state the judge or tribunal within whose jurisdiction the witnesses are resident*], to take the evidence of said witnesses.

(2) LETTER OF REQUEST.

[*A. S., 15th March* 1890, *Sched. B.*]

Whereas an action is now pending in the Court of in which A. B. is pursuer and C. D. is defender: And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties that the following persons should be examined as witnesses upon oath that is to say—

E. F. of ;
G. H. of ;
And I. J. of .

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court: Now I have the honour to request, and do hereby request, that for the reasons aforesaid, and for the assistance of the said Court, you, as the president and judges of the

said , or some one or more of you, will be pleased to summon the said witnesses to attend at such time and place as you shall appoint, before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request, in the presence of the agents of the pursuer and defender, or such of them as shall on due notice given attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers, and documents produced upon such examination to be duly marked for identification; and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure; and to return the same through His Majesty's Secretary of State for Foreign Affairs for transmission to the said Court of .

[*Signed by the Sheriff.*]

[*Address to the Foreign Court.*]

3. Interrogatories.

Interrogatories to be administered to , a witness to be produced, sworn, and examined on the part of A. B. [*designation*], pursuer, in a certain cause now depending before the Sheriff of at , in an action at his instance against C. D. [*designation*], defender, before , commissioner appointed by interlocutor, dated , in the year of the reign of King George the Fifth.

[*Here follow the particular interrogatories to be put to the witness.*]

Lastly, that it shall be competent to the commissioner to put any question or questions to the witness touching the matter in the cause besides what he has been interrogated unto; and to require the witness to make such additions and explanations as he shall think necessary. That it shall be competent to the commissioner to ask the witness whether he knows of any other matter or thing touching the matters in question in the cause besides what he has been interrogated unto. If yea, to declare the same fully and at large as if he had been particularly interrogated thereto.

4. Report of Commission.

At , the day of years, there was produced to A. B. [*designation*] a certified copy interlocutor, dated

, pronounced by the Sheriff-Substitute in the action depending before him in the Sheriff Court of at at the instance of , pursuer, against , defender, whereby, *inter alia*, commission is granted to the said A. B. to take the oaths and examinations of witnesses [*or* to examine havers] in the said action; of which commission the said A. B. accepted and made choice of [*name and designation*] to be his clerk, and administered to him the oath *de fideli administratione officii*.

Thereafter compeared the pursuer personally [*if so*], and by , his agent; as also the defender personally [*if so*] and by , his agent.

Compeared [*name and designation of witness*], who, being solemnly sworn and interrogated as a witness for the pursuer [*or* defender], depones:

All which is truth, as the deponent shall answer to God. [*Thereafter follows an enumeration of any deletions, marginal additions, &c.*]

[*To be signed by witness, commissioner, and clerk.*]

Docquet at end of Report.

What is contained on this and the preceding pages is the report of the commission mentioned on the first page hereof.

Humbly reported by

[*Signed by commissioner and clerk.*]

[*Where the witness has scruples about the taking of an oath and prefers to affirm, the report runs*—]

Compeared [*name and designation of witness*], who, having solemnly, sincerely, and truly declared and affirmed that he would speak the truth, the whole truth, and nothing but the truth, depones, &c.

[*The conclusion in this case is*—]

Affirmed at this day of .

[*When the commission is to examine havers, the report runs*—]

Compeared [*name and designation of witness*], who, being solemnly sworn and examined on behalf of the pursuer as a haver, and asked to produce the writings called for in specification No. of process [*or* article of No. of process], depones:

Commission and Diligence.

NOTE.—*Documents bearing on the questions at issue in a cause may be recovered either out of the hands of the opposite party or of third parties, but before a diligence can be obtained there must be a suit in dependence. As the purpose of the application is to recover documents to be used* in

modum probationis, *the appropriate stage for the motion is after proof has been allowed, but diligence will be granted for the recovery of documents even before the closing of the record, on special cause shown* (*Mackay, p.* 241).

The party making the motion lodges in process a specification, i.e. *a list, as precise as possible of the various documents called for. Intimation of the enrolment, accompanied by a copy of the specification, is given to the other party. No intimation is given to any third parties who may be in possession of the documents, and any objections they may have to producing them must be stated to the commissioner.*

As the object of the diligence is the recovery of documents, all questions to the haver must be confined to this point; but a witness who depones that he has parted with or destroyed the documents may be examined as to how and when they passed from his possession, or how, when, and why he destroyed them.

Common Passage, Interdict against Closing.

—*See* INTERDICT, No. 6.

Common Property.

1. For Declarator of, and Interdict.

Sheriffdom of at .

A. B. [*designation*], proprietor of , *Pursuer*,

against

C. D. [*designation*], proprietor of , *Defender.*

The demand of the pursuer is—

For declarator that a court or yard situated between pursuer's and defender's properties is common property *pro indiviso* of pursuer and defender.

Therefore the pursuer craves the Court—

To find and declare that the court or yard, extending to about yards square and situated between pursuer's and defender's properties in Street, , with the entry or passage thereto, is common property belonging *pro indiviso* to the pursuer and defender for their common use and enjoyment, and that defender has no exclusive right to the property therein: To interdict defender from depositing in said yard or court, from appropriating it, or any part of it, to his own use, and from interfering with pursuer's legal use thereof as common property *pro indiviso:* [To grant interim interdict to that effect], and to find defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is proprietor of the house, No. Street, , [*set forth title*], and the defender is the proprietor of the house, No. , in said street [*set forth title*].

2. The pursuer's and defender's said properties are separated from each other by a passage leading into a court or yard, extending to about yards square. Said court or yard, with the passage leading into it, is the common property of the pursuer and defender, for their mutual use and benefit.

3. The defender has recently appropriated said courtyard to his own uses by [*state how*], and has blocked up the passage leading into it, and so obstructed the pursuer's right to the free use and enjoyment thereof.

4. The pursuer has called upon defender to remove said and to open up the passage, so that the pursuer may have free use of and access to the said court or yard, but the defender refuses to do so.

PLEA IN LAW.

The pursuer having, in virtue of his titles, a right *pro indiviso* to the free use and enjoyment of said court and the passage leading into it, is entitled to decree, with expenses, as craved.

2. For Declarator of Interdict against Building and Removal thereof.

(*See also* INTERDICT, No. 6.)

Sheriffdom of at .

A. B. [*designation*], proprietor of , *Pursuer*,

against

C. D. [*designation*], proprietor of , adjoining that of pursuer, *Defender*.

The demand of the pursuer is—

For declarator that a court or yard situated between the properties of pursuer and defender is common property *pro indiviso* of pursuer and defender, for interdict against defender's building thereon, and for a decree ordaining defender to remove buildings already erected thereon.

Therefore the pursuer craves the Court—

To find and declare that the court or yard extending to about yards square, and situated between pursuer's and defender's properties in Street, , with the entry or passage thereto, is common property belonging *pro indiviso* to pursuer and defender for their common use and

enjoyment, and that defender has no exclusive right to the property therein, and that defender is not entitled to build on or in said court or passage so as to interfere with the pursuer's right to and legal use thereof: To grant interdict against the defender accordingly [and to grant interim interdict]: To ordain the defender within days to take down and remove the buildings, plant, and materials erected or placed by him in said yard or passage, and failing defender's doing so, to grant warrant to pursuer to do so at defender's cost, and to grant decree for payment thereof; and to find defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is the proprietor of the house situated at No. Street, [*set forth title*], and the defender is the proprietor of the house No. Street, [*set forth title*].

2. The pursuer's and defender's said properties are separated from each other by a court or yard, which, in accordance with their respective titles, is the common property of pursuer and defender for their mutual use and benefit.

3. The defender has recently begun to build an outhouse on said court or yard, and for this purpose to use the common passage between pursuer's and defender's properties. He has, in course of said erection, laid down a large quantity of building plant and material. Said erection and plant and material are an encroachment on pursuer's rights, and prevent his free use and enjoyment of said court or yard.

4. Pursuer has called on defender to remove said erection and the building plant and material connected therewith, but defender refuses to do so.

PLEA IN LAW.

The pursuer being, in virtue of his said titles, entitled to a right *pro indiviso* to the free use and enjoyment of said yard and passage, is entitled to decree, with expenses, as craved.

Common Property, Division of.

1. For Division of, and Sale.

Sheriffdom of at

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For division of the lands of between pursuer and defender.

Therefore the pursuer craves the Court—

To find and declare pursuer entitled to insist in an action of division of the lands of [*describe from title*] between him and defender: To determine the value and extent of said lands: To appoint a surveyor to measure and report as to the division thereof: To divide said lands equally between pursuer and defender [*or* according to the respective *pro indiviso* rights and interests of pursuer and defender], and to mark off the divisions so made: To declare the divisions so made to belong, heritably and irredeemably, to pursuer and defender respectively, and to ordain them to execute the necessary deeds; or, in the event of its being found that such division is impracticable or inexpedient, to find and declare that said subjects should be sold and the price divided: To grant warrant for their sale by public roup, and to ordain the pursuer and defender to execute and deliver the necessary deeds to the purchaser thereof: To declare the purchase price thereof, after deducting expenses, debts, and burdens, divisible between the pursuer and defender in equal portions [*or* in the proportions of]; and to find the pursuer and defender equally liable [*or* liable in the proportions of] in the expenses hereof and of obtaining the said division or sale.

Condescendence.

1. The subjects described in the crave consist of a piece of ground adjacent to the village of X. in the parish of Y. The value of said subjects is £ [*or* does not exceed £1000].

2. The pursuer is a *pro indiviso* proprietor of said subjects along with defender.

3. The pursuer is desirous of having said subjects divided between him and defender, or, should division prove impracticable or inexpedient, of having them sold and the price divided.

4. Pursuer and defender have not been able to concur in a division or sale of the subjects.

Plea in Law.

The pursuer and defender being joint proprietors *pro indiviso* of said lands, pursuer is entitled to decree with expenses, as craved.

2. For Sale.

Sheriffdom of at

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For sale of a dwelling-house and shop situated at , belonging to pursuer and defender in common property.

Therefore the pursuer craves the Court—

To find and declare that pursuer is entitled to insist in an action of sale of [*describe subjects*], and that said subjects should be sold and the price divided: To authorise the sale thereof by public auction: To ordain pursuer and defender to execute and deliver the necessary deeds to the purchaser thereof: To declare the purchase price thereof, after deducting necessary expenses, debts, and burdens, divisible equally between pursuer and defender [*or* between pursuer and defender in the proportion of]; and to find pursuer and defender [*ut supra*].

CONDESCENDENCE.

1. The subjects described in the crave, the value of which is £ , [or which do not exceed £1000 in value] are let at an annual rent of £ .

2. The pursuer and defender are *pro indiviso* proprietors of said subjects, conform to [*state titles*].

3. The said subjects are incapable of division without loss and depreciation in value, and pursuer desires to have them sold and the price divided between him and defender.

4. The parties have been unable to concur in a sale of said subjects.

PLEA IN LAW.

Pursuer and defender being joint proprietors *pro indiviso* of said subjects, and said subjects being incapable of division without loss, pursuer is entitled to decree, with expenses, as craved.

3. Division of Moveables.

NOTE.—*Moveable property of all kinds held in common may be judicially divided at the instance of any one of the joint proprietors concerned. The proper conclusions of such an action are either that the property be exposed to public sale, or that the joint owners shall take the share of the pursuer*

at a specified price, or that they shall sell him their shares at the same rate. In an action for division of moveables, the form in the Sheriff Court is the same as that in an action of set and sale, and is sufficiently illustrated by the form in that action.

See also SHIPPING [SALE AND SET], No. 19.

Commonty, Division of.

Sheriffdom of at .

A. B. [*designation*], heritable proprietor of the lands of , *Pursuer*,

against

C. D. and E. F. [*designation*], *Defenders.*

The demand of the pursuer is—

For division of the commonty known as , in the parish of , and county of .

Therefore the pursuer craves the Court—

To ordain the defenders to produce the writs and titles in virtue whereof they claim any right of property in or servitude over the commonty of , in the parish of : To find and declare that pursuer is entitled to prosecute an action of division of said commonty against the defenders or such of them as have any right thereto, and that the same ought to be divided among the several parties concerned according to the valuation or valued rent of their several lands and properties: To determine the extent, limits, quality, uses, and marches thereof, as the same have been reputed possessed and enjoyed for forty years bygone or past the memory of man, by the pursuer, his predecessor or authors, and such of the defenders as shall produce their rights in manner foresaid: To describe the marches of said commonty and set up march stones or fences thereon: To find and declare the valuations or valued rents of the lands and properties of the several parties who shall instruct their right and interest in said commonty: To appoint a proper person or persons to value on oath the several parts and parcels of said commonty, on due consideration of the different qualities and uses of the soil and grounds thereof, and to appoint a surveyor or surveyors to measure and survey the said commonty and the severals parts and pertinents thereof so to be valued: To divide the said commonty among the pursuer and the other persons concerned in the proportions above specified: To draw out a plan

thereof and of the several divisions made of the same: To mark off by stones or otherwise the several divisions and shares to be allocated to each person, the parts and shares to be divided and allotted to each heritor being always such as may be next adjacent or as near as possible to his property: To divide, if possible, the mosses lying within said commonty among the said heritors in manner foresaid, or if it shall be instructed that the said mosses cannot be divided, to leave the same still common, with free ish and entry thereto: To approve of the said divisions and allocations and to ordain the same to have full effect: To declare the said divisions and shares so allotted to pertain and belong to the respective parties heritably and irredeemably: To find and declare that the pursuer and other persons concerned, and their heirs and successors, have right to enjoy and possess the respective shares or divisions of the said commonty allotted and appointed to each of them as parts and pertinents of their other lands and heritages: To discharge each of the pursuer and defenders, proprietors of the said commonty, from interfering in all time coming with the respective shares or divisions so allotted to others: To ordain the pursuer and defenders to execute such deeds and writings as may be necessary to carry these proceedings into effect: To find and declare that such of the defenders as shall not produce their rights and titles and instruct their possession of said commonty have no right or interest therein, and to interdict them from claiming or exercising such right or interest in all time coming: To ordain each of the defenders to pay to the pursuer such sum as shall be ascertained to be their respective proportions of the expenses to be disbursed in prosecuting and obtaining the said division and of the process to follow hereon; and in the event of any of the defenders resisting the crave of this application, or otherwise causing unnecessary expense, to ordain such defender to pay to the pursuer such sum as shall be ascertained to be the expense caused by such resistance or otherwise unnecessarily.

Condescendence.

1. The commonty known as is situated in the parish of , and extends to about acres, all as delineated and coloured on the plan herewith produced. The value of the commonty is £ [*or* does not exceed £1000].

2. The pursuer is heritable proprietor of the lands of ,

conform to [*state titles*]. The valuation or valued rent of said lands is £ .

3. The pursuer has thus a right of property in the said commonty, and he and his predecessors and authors have from time immemorial, by themselves and their tenants of said lands, possessed the said commonty by pasturing cattle, casting feal and divot [*mention acts founded on*] and exercising other rights of commonty therein.

4. The pursuer, whose right and interest in the said commonty extends to at least [*proportion*] thereof, is thus entitled to and claims of said lands, and that without prejudice to any greater proportion to which he may be found entitled on the examination of the titles of the parties to the present action. In any event the pursuer is entitled to have a share of the commonty allocated to him in property corresponding to the amount of the *cumulo* valuation of his said lands, in terms of the Act of Parliament, 1695, c. 38, and of the Sheriff Courts Act, 1907, sec. 5, subsec. 3.

PLEAS IN LAW.

1. In virtue of his right and interest therein the pursuer is entitled to insist on a division of the said commonty and to a share thereof proportioned to his valued rent, and next adjacent to his lands and heritages above specified.

2. The pursuer is entitled, in the event of any mosses in the said commonty being reserved from the division, to have free ish and entry thereto in exercise of his rights.

Commutation of Carriages and Services.—*See* CARRIAGES AND SERVICES.

Compensation. *See* LANDS CLAUSES ACT, No. 3; REPARATION.

Completion of Title, for.—*See* TITLE, COMPLETION OF.

Completion of Work, for.—*See* CONTRACT; IMPLEMENT; INSPECTION.

Composition Contract.—*See* BANKRUPTCY.

Condictio indebiti.—*See* REPETITION.

Confirmation, for Authority to Issue.—*See* EXECUTOR.

Conjoin Action.—*See* MOTION, No. 3.

Conjugal Rights Act, under.

NOTE.—*Under secs.* 1 *to* 5 *of this Act, a wife deserted by her husband was enabled to obtain an order to prevent his seizing, by virtue of his* jus mariti, *property which she had earned or acquired subsequent to the desertion. As the Married Women's Property Act,* 1877, *excludes the* jus mariti *and right of administration from the wife's earnings, and the Married Women's Property (Scotland) Act,* 1881, *excludes the* jus mariti *from the wife's whole moveable estate in marriages after the Act, and in marriages before the Act from property acquired thereafter, except where the husband has, before the passing of the Act, by irrevocable deed made a reasonable provision for the wife in the event of her surviving him, applications for a protection order are now practically unknown.*

Consent, to Dispense with.—*See* MARRIED WOMEN'S PROPERTY ACT.

Consent to Decree.—*See* MINUTE, No. 8.

Consignation.—*See* MOTION.

Consignee.—*See* ACCOUNTING, No. 1; SHIPPING.

Consignment.—*See* ACCOUNTING, No. 1.

Constitution.

NOTE.—*An executor or other representative of a deceased person is entitled to require that illiquid claims against the estate of the deceased shall be constituted by decree before making payment. In such cases the pursuer seeks to have it declared that the sum sued for is a debt due by the estate of the deceased. The creditor must himself bear the expense of constituting his debt (Smith,* 22 *D.* 1495). *The defender incurs no liability for expenses unless he appears and offers opposition (Earl of Rosslyn,* 9 *S. L. R.* 291),

and accordingly the pursuer only asks for expenses in the event of the defender appearing and offering opposition. If he appears and unsuccessfully opposes the action, he must pay expenses in the usual way (*Davidson*, 6 *M.* 151).

Where the representatives renounce the succession, the pursuer asks for decree cognitionis causa tantum (*see Forrest*, 1 *M.* 806). *Decree* cognitionis causa tantum *may also be asked for when it is necessary to have recourse to the Court within six months of the death of the debtor in order to elide prescription.*

1. Against Executor for, and Payment.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], executor of the deceased E. F. [*designation*], *Defender.*

The demand of the pursuer is—

For constitution of a debt of £ due by the said E. F., and payment thereof by defender as his executor.

Therefore the pursuer craves the Court—

To find and declare that E. F. [*designation*] was due pursuer £ ; that pursuer is a creditor on the said E. F.'s estate therefor, with interest from , and to grant a decree for payment by defender to pursuer of £ , with interest foresaid, and, in the event of defender opposing this application, with expenses.

CONDESCENDENCE.

1. Prior to his death the said E. F. incurred an account to pursuer for goods supplied, amounting to £ , conform to account hereto attached.

2. The defender is the executor duly decerned and confirmed of the said E. F.

3. The defender declines to pay the said debt unless it is previously constituted.

PLEA IN LAW.

The sum sued for being due and resting owing by defender *qua* executor of the said E. F., decree should be granted, with expenses, as craved.

2. For, Cognitionis causa tantum, where Representatives have Renounced.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], only child of the deceased E. D. [*designation*], as nearest of kin of the said E. D., *Defender*.

The demand of the pursuer is—

For constitution of a debt of £ , due by the said E. D. to pursuer.

Therefore the pursuer craves the Court—

To find and declare, *cognitionis causa tantum*, that the deceased E. D. [*designation*] was due pursuer £ for goods supplied, with interest from , together with the expenses hereof, and that pursuer is a creditor on the deceased's estate for payment thereof.

CONDESCENDENCE.

1. The deceased E. D. was predeceased by his wife, and the defender is his only child and nearest of kin.

2. Prior to his death the said E. D. incurred an account to pursuer for goods supplied amounting to £ , conform to account hereto attached.

3. The defender has renounced his [*or* her] right of succession to the deceased, and the pursuer desires to attach the moveable estate of deceased in payment of his debt.

PLEA IN LAW.

The pursuer, being a creditor of the deceased E. D., and the defender, his nearest of kin, having renounced the succession, decree should be granted as craved.

3. For, and Payment; or Alternatively for Constitution Cognitionis causa tantum.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*] only child and nearest of kin of the deceased E. D. [*designation*], and duly charged to confirm executor as such, *Defender*.

The demand of the pursuer is—

For constitution of a debt of £ , due by the said E. D., and for payment thereof by defender, or alternatively for constitution thereof *cognitionis causa tantum*.

Therefore the pursuer craves the Court—

To find and declare that the deceased E. D. [*designation*] was due pursuer £ for goods supplied, with interest from , and that pursuer is a creditor on the said E. D.'s estate therefor: To grant a decree against the defender, as E. D.'s nearest of kin, and duly charged to confirm as such, for payment to pursuer thereof, and, in the event of defender's opposing this application, the expenses hereof; or otherwise, in the event of defender producing a valid renunciation of his right to the moveable estate of the said E. D., to find and declare, *cognitionis causa tantum*, that the deceased E. D. was due pursuer £ for goods supplied, with interest from , and that pursuer is a creditor on deceased's estate for payment thereof.

CONDESCENDENCE.

1 and 2. [*ut supra*].

3. The defender has not applied for confirmation of deceased's estate as his nearest of kin, though he has been duly charged to do so, nor has he renounced his rights therein, and he refuses to pay the debt due by deceased.

PLEAS IN LAW.

1. The pursuer being a creditor of the deceased E. D., and the defender being his nearest of kin and duly charged to confirm, the pursuer is entitled to decree for payment of his debt.

2. *Alternatively*, and in the event of defender removing his rights to the estate of the deceased E. D., pursuer is entitled to decree *cognitionis causa tantum*.

Constitution and Adjudication, Contra hereditatem jacentem.

NOTE.—*Adjudications in general are competent only in the Court of Session, with the single exception of adjudications* contra hereditatem jacentem, *which are competent in the Sheriff Court of the district where the lands lie, as well as in the Court of Session. In practice,*

it is believed that little, if any, use is made of this process in the Sheriff Court.

Sheriffdom of at .

A. B. [*designation*], a creditor of the deceased B. D. [*designation*], *Pursuer*,

against

C. D. [*designation*], eldest son and heir of the said deceased B. D., *Defender*.

The demand of the pursuer is—

For a decree ordaining defender, as heir in general to his father the said B. D., to pay pursuer £ , due to pursuer by his said father, conform to bill [*or other liquid document of debt*].

Therefore the pursuer craves the Court—

To grant a decree against the defender, as heir foresaid, for payment to pursuer of £ , with interest from , till payment, and in the event of his opposing the crave hereof, with expenses; or otherwise, in the event of defender producing a valid renunciation of his rights as heir of the deceased B. D., to find and declare, *cognitionis causa tantum*, that the deceased B. D. was due the pursuer £ , with interest, from , and that pursuer is a creditor on the estate, heritable and moveable, of the deceased B. D. for payment thereof, and is entitled to decree of adjudication *contra hereditatem jacentem et bona mobilia et immobilia* of the deceased B. D. at the date of his death, or which might have belonged to defender had he not renounced to be heir of said B. D. for payment thereof; To adjudge and declare All and Whole the lands [*describe them in terms of Sched. O of the Conveyancing (Scotland) Act*, 1874], together with the rents, maills, and duties thereof from [*date of debtor's death*], with the titles and other writs connected with the said lands or rents and others granted to and in favour of or by the deceased B. D. so far as in his possession, or to the extent to which he had a right thereto, to belong to the pursuer and his heirs and assignees heritably during the not redemption of said lands, and for payment to him or them of the said sum of £ , with interest foresaid to the date of the decree to follow hereon, and expenses of process, together with the legal interest in the *cumulo* amount of said sum, interest and expenses from the date of the decree to follow hereon till payment, and that over and above such composition as may be due to the superior and the expense of the infeftment on the decree

craved, with the legal interest on said composition and expense from the date of payment being due thereof till payment to the pursuer; and to find and declare that the pursuer shall hold the said lands and others in like manner and as freely as the said deceased B. D. or his authors, or the defender, if he had not renounced, held or might have held the same.

CONDESCENDENCE.

1. The defender is the eldest son and nearest lawful heir in general of the deceased B. D.

2. By bill drawn by the pursuer upon and accepted by the said deceased B. D., dated , and payable months after date, the said B. D. bound and obliged himself to pay the pursuer, £ . The said bill fell due on , and was dishonoured. [*Or*, By bond granted by the said B. D. to the pursuer dated , the said B. D. bound and obliged himself to pay to the pursuer £ , with interest from said date till payment, *or as the case may be.*]

3. The defender, as heir foresaid, and held as duly charged to enter heir in general to the said B. D. in virtue of the citation and execution to follow hereon, is liable to the pursuer in the said sum, with interest, unless he shall produce a valid renunciation of his rights as heir in general of the said B. D.

4. In the event of such renunciation by the defender the pursuer is entitled to a decree *contra hereditatem jacentem* of the deceased B. D. for payment of said sum.

PLEAS IN LAW.

1. The pursuer, in virtue of the bill [*bond, decree, etc.*] founded on, is entitled to decree against the defender for payment of the sum therein contained, with interest, as craved.

2. In any event pursuer, in virtue of said bill [*bond, decree, etc.*], is entitled to adjudge the estate of deceased in *pro tanto* payment of the amount therein contained, as craved.

Contract.—*See* ACCOUNT, No. 4; DECLARATOR, No. 9; IMPLEMENT; PAYMENT, No. 8; PLENISH.

Contract, Breach of.—*See* REPARATION.

Contractor, for Relief against.—*See* RELIEF.

Copartner, against, for Accounting.—*See* ACCOUNTING, No. 5.

Copyright.—*See* INFRINGEMENT OF COPYRIGHTS AND PATENTS; INTERDICT, No. 9.

Corrupt Practices Act, 1890.—*See* ELECTIONS, Nos. 3, 4.

Count, Reckoning, and Payment.—*See* ACCOUNTING.

County Council.—*See* ELECTIONS.

Creditor, against, for Accounting.—*See* ACCOUNTING.

Creditor, by, for Appointment as Executor.—*See* EXECUTOR.

Croft, for Interdict against Sale of.—*See* INTERDICT.

Crofters Holdings Acts, under.

1. **For Removing for Non-Payment of One Year's Rent (under s. 3).**—*See* AGRICULTURAL HOLDINGS ACT, No. 3, *the landlord having the same remedy as under sec.* 17 *of the Act of* 1908.

2. **For Removing for Non-Payment of Two Years' Rent (under s. 3).**

Sheriffdom of at .

A. B. [*designation*], proprietor of the estate of R., on which defender's croft is situated, *Pursuer*,

against

C. D. [*designation*], crofter in the holding of X., being a part of pursuer's estate of R., *Defender*.

The demand of the pursuer is—

For declarator that defender has forfeited his croft for non-payment of two years' rent.

Therefore the pursuer craves the Court—

To find that defender is two years in arrear in payment of the rent due to pursuer by him as crofter in the holding of X. in the parish of Y.: To find and declare that defender has thereby forfeited his tenancy in terms of sec. 3 of the Crofters Holdings (Scotland) Act, 1886: To ordain the defender to flit and remove himself and his family, sub-tenants, cottars, and dependants, with their cattle, goods, and gear, furth and from the said holding, that the pursuer or others in his right may enter into and possess the same; and to grant a decree against defender for payment to the pursuer of £ , with interest from ; and to find defender liable in expenses.

CONDESCENDENCE.

1. The defender is a crofter within the meaning of the Crofters Holdings (Scotland) Act, 1886, and as such is in occupation of said holding.

2. The rent of said holding is in arrear to the extent of £ , being full years' rent thereof, conform to statement herewith produced.

3. The defender, though repeatedly applied to, delays or refuses to make payment of said sum.

PLEA IN LAW.

Two years' rent of said holding being due and unpaid, pursuer is entitled to decree with expenses, as craved.

3. For Removing for Breach of Statutory Regulation (under s. 3).

NOTE.—*The prayer is similar to the preceding, except that for the first conclusion will be substituted*:—To find that defender has [*state statutory regulation contravened*]. *The conclusion for payment of arrears may, if necessary, be included. The condescendence will narrate the breach of the statute complained of, and, unless the tenant is also in arrear, the only plea in law will be*:—The defender having contravened the statutory regulations contained in sec. 1, subsec. of the Crofters Holdings (Scotland) Act, 1886, decree should be granted, with expenses, as craved.

4. By Legatee for Declarator of Tenancy (under s. 16).

Sheriffdom of at .

A. B. [*designation*], nephew [*or other relative, or as the case may be*] and legatee of the deceased F. G. [*designation*], *Pursuer*,

against

C. D. [*designation*], proprietor of the estate of X., *Defender*.

The demand of the pursuer is—

For declarator that pursuer is tenant of the holding formerly occupied by the deceased F.G.

Therefore the pursuer craves the Court—

To find and declare that the pursuer is tenant of the holding of M., in the parish of N. and county of Y., formerly occupied by the deceased F. G., as from [*date of tenant's death*], and to find the defender liable in expenses.

CONDESCENDENCE.

1. The deceased F. G. was in occupation as crofter of the holding of M. in the parish of N. and county of Y., and forming part of the estate of X., of which defender is proprietor.

2. The said F. G. died on , leaving a last will and testament dated , by which he bequeathed to pursuer his tenancy of said holding of M. The pursuer is [*relationship*] of the deceased.

3. By notice dated , the pursuer intimated to defender the bequest of said tenancy in his favour, and by notice dated the defender declined to accept the pursuer as tenant in said holding. This application is consequently made, in terms of section 16 of the Crofters Holdings (Scotland) Act, 1886.

PLEA IN LAW.

The pursuer, as legatee of the tenancy of said croft, is entitled to decree, with expenses, as craved.

5. For Allocation of Holding of Deceased Crofter (under s. 16).

Sheriffdom of at .

C. D. [*designation*], proprietor of the estate of X., *Pursuer*,

against

A. B. [*designation*], nephew [*or as the case may be*] and legatee of the deceased F. G. [*designation*], *Defender*.

The demand of the pursuer is—

For allocation of the holding of the deceased F. G.

Therefore the pursuer craves the Court—

To find and declare that the holding at M., in the parish of N. and county of Y., formerly occupied by the said deceased F. G., should be added to the holdings at M. aforesaid presently occupied by G. H. and J. K., and to find the defender liable in expenses in the event of his opposing this application.

CONDESCENDENCE.

1. The pursuer is proprietor of the estate of X., of which the holding at M. recently occupied by the deceased F. G. and the holdings there occupied by G. H. and J. K. form parts. The said holdings are all situated in the parish of N., which is a crofting parish.

2. The said F. G. died on , leaving a will by which he bequeathed his tenancy of said holding to the defender, his [*relationship*].

3. The holdings of the said G. H. and J. K. are adjacent to the deceased's holding. They extend respectively to only [*area*] and [*area*], and are rented at £ and £ respectively. The deceased's holding extends to [*area*], and is rented at £ , and the pursuer proposes to take down the existing house thereon and divide the holding equally between the holdings of the said G. H. and J. K. The said addition to their holdings would be of great advantage to the said G. H. and J. K., both of whom are able to properly stock [*or* cultivate] the same.

PLEA IN LAW.

In the circumstances condescended on the pursuer is entitled, in terms of sec. 16 of the Crofters Holdings (Scotland) Act, 1886, to decree, with expenses, as craved.

6. For Removal of Surplus Stock (under Crofters Common Grazings Regulation Act, 1891).

Sheriffdom of at .

A. B. [*designation*], proprietor of the estate of Y., *Pursuer*,

against

C. D. and E. F. [*designations*], crofters in the township of M., part of pursuer's estate of Y., *Defenders.*

The demand of the pursuer is—

For removal by defenders of surplus stock from the common grazing of the township of M.

Therefore the pursuer craves the Court—

To find that the defenders have been and are putting cattle on the

common grazing of the township of M., in excess of the numbers which they are respectively entitled to put thereon by the grazing regulations of said township: To ordain the defenders, within such time as the Court may fix, to remove from the said common grazing the cattle respectively belonging to them so far as in excess of such numbers; and failing such removal, to grant warrant to pursuer to remove said excess of cattle, to sell the same by public roup or private bargain, and to consign the surplus, under deduction of the expenses of this application and of the said removal and sale, in the hands of the Clerk of Court for behoof of the defenders; and to find the defenders liable in expenses, all in terms of the Crofters Common Grazings Regulation Act, 1891.

CONDESCENDENCE.

1. The township of M. forms part of the estate of Y., of which pursuer is proprietor, and is situated in the parish of M., which is a crofting parish. The defenders are two of the crofters of said township, and are members of .

2. The committee appointed to regulate the common grazings of the said township (of which the defenders are members) drew up regulations for the said common grazings, which were approved by the Crofters Commission, and to which the Sheriff on interponed authority. A copy of said regulations is herewith produced. Under said regulations the sowming of the defender C. D. is [*state it*], and of the defender E. F. [*state it*].

3. For more than a year past the defenders have, in breach of said regulations, put on the said common grazing [*state number*] cattle in excess of their proper sowming, and, although repeatedly required, refused to remove the said excess.

PLEA IN LAW.

The number of cattle put by defenders on said common grazing being in excess of the number they are legally entitled to put on, pursuer is, in terms of the statute, entitled to decree, with expenses, as craved.

Curator ad litem.—*See* MINUTE.

Curator bonis.—*See* JUDICIAL FACTOR.

Curatorial Inventories.—*See* CURATORS, CHOOSING, No. 3.

Curators, Choosing.

NOTE.—*Any minor who has no curators may, on attaining puberty, choose curators under the Act* 1555, *c.* 35. *The proceedings may be taken either in the Court of Session or the Sheriff Court. If desired, there may be and usually are combined with the action for choosing curators conclusions for making up curatorial inventories.*

The defenders are two of the nearest of kin on the father's and two on the mother's side other than any who are to be nominated. Where the nearest of kin are furth of Scotland, a petition is presented in the Court of Session to dispense with their nomination, and the action then proceeds against the nearest resident in Scotland.

After the summons is called, &c., the minor either signs a minute of nomination or executes and lodges a deed of nomination. The curators may accept either (1) *by minute and taking the oath in Court, or* (2) *by accepting and taking the oath before the Sheriff or a J. P.*

Any person major and resident in Scotland (except married women) may be curators. Persons furth of Scotland may be appointed on their agreeing to prorogate the jurisdiction.

1. To Choose Curators.

Sheriffdom of at .

A. B. [*designation*], minor son of the deceased C. B. [*designation*], *Pursuer*,

against

C. D. and E. F. [*designations*], two of pursuer's next of kin on his father's side, and G. H. and J. K. [*designations*], two of his next of kin on his mother's side, *Defenders*.

The demand of the pursuer is—

For a decree ordaining defenders to appear at such diet as the Court may appoint to see and hear a curator or curators chosen and confirmed to pursuer, and to concur with him in making up a true and just inventory of pursuer's means and estate.

Therefore the pursuer craves the Court—

To ordain the defenders and all others who may be interested to appear at a diet, to be fixed by the Court, for choosing curators to the pursuer during his minority, and to concur with the curator or curators to be chosen and confirmed in making up an inventory of pursuer's means and estate, all in terms of the

Acts 1555, c. 35, and 1672, c. 2, with certification that, if they fail to appear, the Sheriff will concur or authorise some fit person to concur with the curator or curators, and interpone authority to such proceedings as may be necessary.

CONDESCENDENCE.

1. The pursuer, who was born on , is the eldest son of C. B., who died on , without having appointed any curator to pursuer.

2. Being in minority, the pursuer desires to choose a curator, in terms of the said statutes, to manage his affairs during his minority and to make up inventories of his estate and effects.

3. The defenders, who are two of pursuer's next of kin on his father's and mother's sides respectively, are of full age and resident in Scotland. [*If not, narrate petition to dispense with their citation.*]

PLEA IN LAW.

The pursuer, being a minor without parents or guardians, is entitled, in terms of the said statutes, to decree as craved.

2. To Confirm Nomination of Curators.

Sheriffdom of at .

A. B. [*ut supra*],
against
C. D. and E. F. [*ut supra*].

The demand of the pursuer is—

For confirmation of the curator chosen by pursuer, and for a decree ordaining the defenders to concur with said curator in making up inventories to pursuer's estate and effects.

Therefore the pursuer craves the Court—

To confirm the nomination of L. M. [*designation*] as curator to the pursuer during his minority, in terms of the deed herewith produced: To ordain defenders to concur with said L. M. in making up inventories of the pursuer's heritable and moveable estate, and to subscribe three copies of the same, all in terms of the Acts 1555, c. 35, and 1672, c. 2, with certification that if they fail to appear the Sheriff will concur or authorise some fit person to concur with the said L. M. and subscribe said copies, and to interpone authority to such proceedings as may be necessary.

CONDESCENDENCE.

[*Ut supra, adding* the pursuer has chosen L. M. to be his curator, conform to deed of nomination herewith produced, *and giving any special reasons for L. M.'s appointment.*]

PLEA IN LAW.

[*Ut supra.*]

3. To Make up Inventories.

Sheriffdom of at .

A. B. [*designation*] and C. D. [*designation*], curators nominated to E. F. [*designation*], son of the deceased G. F. [*designation*], conform to his trust-disposition and settlement, dated , and registered in the Sheriff Court books of the , *Pursuers*,

against

G. H. and J. K. [*designations*], two of pursuer's next-of-kin on his father's side, and L. M. and N. O. [*designations*], two of his next of kin on his mother's side, *Defenders.*

The demand of the pursuers is—

For a decree ordaining defenders to concur with pursuers in making up and subscribing three copies of a true and complete inventory to the estate of the said E. F.

Therefore the pursuers crave the Court—

To ordain the defenders and all others having interest to concur with pursuers in making up and subscribing three copies of a true and complete inventory of the heritable and moveable estate of the said E. F., and, in the event of their failing to do so, to authorise a fit person to concur, all in terms of the Acts 1555, c. 35, and 1672, c. 2, and to interpone authority to any necessary proceedings.

CONDESCENDENCE.

1. The deceased G. F. died on , leaving a trust-disposition, and settlement dated and registered as aforesaid, by which, *inter alia*, he appointed the pursuers to be tutors and curators to such of his children as should be in minority at the date of his death.

2. The said E. F. was born on , and is now years of age. The defenders, who are all major and resident in Scotland, are his uncles [*or as the case may be*] and next of kin on his father's and mother's sides respectively.

3. The pursuers have applied to defenders to concur with them in making up and subscribing the necessary curatorial inventories, but they refuse.

PLEA IN LAW.

The pursuers as curators foresaid are entitled, in terms of the statutes, to decree as craved.

4. By Curator for his Discharge.

Sheriffdom of at .

A. B. [*designation*], who on was appointed curator for C. D. [*designation*], *Pursuer*.

The demand of the pursuer is—

For his discharge as cautioner and the delivery of his cautioner's bond of caution.

Therefore the pursuer craves the Court—

To find that said curatory has come to an end: To exoner and discharge pursuer and X. Y. [*designation*], his cautioner, and to authorise the Clerk of Court to deliver up to X. Y. his bond of caution.

CONDESCENDENCE.

1. Conform to deed of nomination dated , the said C. D. chose pursuer as his curator to act for him during his minority, and the said nomination was on duly confirmed by the Sheriff of , conform to extract herewith produced.

2. The said C. D., who was born on , conform to extract of certificate of birth herewith produced, is now of age, and the pursuer's duties as curator have come to an end.

3. The pursuer has rendered an account of his intromissions with the estate to the said C. D., who has approved of said account and granted pursuer a discharge of his intromissions as his curator, which is herewith produced.

4. The pursuer desires delivery of his cautioner's bond of caution and a finding that the curatory has come to an end.

PLEA IN LAW.

The pursuer's curatory having come to an end, and his ward having approved of his accounts and granted him a discharge, the pursuer is entitled to decree as craved.

Custody of Children, for.—*See* DELIVERY, Nos. 8, 9; GUARDIANSHIP.

Damages.—*See* CONTRACT; COPYRIGHT; INTERDICT; REPARATION.

Dangerous Building, to Take Down, &c.—*See* POLICE, &c., ACTS.

Dead Freight, Claim for.—*See* SHIPPING, No. 13.

Debtor, for Imprisonment of Alimentary.—*See* ALIMENT, No. 9.

Debts, Recovery of.—*See* ACCOUNT; PAYMENT.

Declarator.

NOTE.—*An action of declarator is one by which some right,* e.g. *of property, servitude, or status, is sought to be declared in favour of the pursuer. The conclusion for declarator is usually followed up by petitory, possessory, or prohibitory conclusions which are sought to be deduced from the main proposition embraced in the declaratory conclusion. The Court will not, as a rule, pronounce judgment on declaratory conclusions where there is not actual or threatened violation of a right. Neither will the Court give decree in terms of a declaratory conclusion where the right itself is not disputed, and the pursuer fails to show that the conclusions he seeks to deduce from it are well founded. As has been said, declaratory actions are intended for making that clear which is at present doubtful, and which it is necessary to make clear. They are not intended to establish truisms* (*Magistrates of Edinburgh* v. *Warrender,* 1 *M.* 887). *The course which the Court takes in such a case is to dismiss the action.*

Another rule as to the competency of such actions is that the Court will not declare a right by anticipation before the facts on which it depends emerge (*see Harvey,* 22 *D.* 1310; *Fleming,* 6 *R.* 589). *This rule has of late years, however, undergone such considerable modification that it may be questioned whether it does not now express the exception rather than the rule itself. The Court will consider and decide almost any question of law in which a suitor has an interest, and as to which he can get a proper contradictor. Indeed, one of the great virtues of this form of action is that litigants may in this way have their rights determined by anticipation* (*Hogg,* 7 *R.* 986; *Fleming,* supra; *Chaplin's Trs.* v. *Hoile,* 18 *R.* 27;

Falconer Stewart v. *Wilkies*, 19 *R.* 630). *In such cases, however, only the parties to the action and their representatives are bound by the decision.*

Generally speaking, where the right which it is sought to have declared is not clear either in its nature or extent, declarator is necessary before the petitory or possessory conclusions can follow, e.g. *where the right of property is claimed against long adverse possession, declarator and not suspension and interdict is the appropriate remedy.*

Actions of proving of the tenor which are brought to set up deeds or writings that have been lost or destroyed, are in substance actions of declarator.

Actions of declarator of trust are necessary where the alleged trustee or his representatives maintain that their right is absolute.

In a bare declarator without any further conclusion for carrying it into effect, the conclusion for expenses should be limited to the event of the defender appearing and opposing.

A. Declarators Relating to Property.

1. Declarator of Property.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator that, as proprietor of , the pursuer has exclusive property in the passage between pursuer's and defender's houses in Street, ; that defender has no right of access thereby; for interdict against defender using said passage; and for payment of £ as damages, and expenses.

Therefore the pursuer craves the Court—

To find and declare that pursuer has exclusive right of property in a passage or entry lying between pursuer's house, No. Street, , and defender's house, No. Street, foresaid, and that defender has no right of access thereby or use thereof: To interdict defender from using or entering upon said passage or interfering with a gate constructed by pursuer across said passage, and a fence erected by pursuer across the eastern boundary of his property at said house: To grant a decree against the defender for pay-

ment to the pursuer of £ as damages; and to find defender liable in expenses.

Condescendence.

1. The pursuer is proprietor of [*take in from titles*] with the house and buildings thereon, conform to herewith produced. The defender is proprietor of the immediately adjoining feu to the east of pursuer's property. The rental of pursuer's property is £ .

2. When pursuer acquired the said feu there were no buildings thereon. There was then a house built on the adjoining feu to the east of pursuer's feu, which is now the property of the defender. Said house was built up to the boundary of the feu, the boundary between pursuer's and defender's property being the gable of said house and a line drawn straight north therefrom to a wall which forms a boundary between pursuer's and defender's properties and other feus lying to the north thereof.

3. Shortly after acquiring said feu pursuer built a house thereon, leaving a passage 10 feet in width between the gable of his house and that erected on the adjoining feu to the east, which was intended as a means of access to the yard at the back of pursuer's house.

4. Pursuer, who did not at that time erect any fence between his property and that of defender lying to the east thereof, permitted E. F. [*designation*], the then proprietor of defender's house, to make use of said passage.

5. The pursuer recently determined to enclose the whole of his property. He accordingly placed a locked gate across said passage, and erected a fence along the eastern boundary of his property.

6. On or about , the day after the completion of said operations, the defender broke down and destroyed the said gate and fence, thus damaging pursuer's property to the extent of £ .

7. The defender has no right of access or use of said passage or the ground enclosed by pursuer, but the defender persists in trespassing thereon.

8. The value of said access is less than £1000.

Pleas in Law.

1. The pursuer, as proprietor of the said subjects, is entitled to decree of declarator and interdict, with expenses, as craved.

2. The defender, having wrongfully and illegally damaged the pursuer's property, is liable in reparation therefor, with expenses, as craved.

2. Declarator of Common Property.

(*See* COMMON PROPERTY; INTERDICT, No. 6.)

3. Declarator of Right to Salmon Fishing and Interdict.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator that pursuer has the sole right of fishing in the river M. *ex adverso* of his estate, and for interdict against defender fishing in said waters.

Therefore the pursuer craves the Court—

To find and declare that pursuer, as heritable proprietor of the lands of X., has the sole right to fish in that part of the river M. which is *ex adverso* of pursuer's said estate; and to interdict defender from fishing in said waters, or interfering with pursuer, or those deriving right from him, in the full possession and enjoyment of said fishing rights; and to find defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is the proprietor of the estate of X. in the parish of and county of [*state titles*], and the defender is .

2. By pursuer's said title the right of fishing in the river M. *ex adverso* of the said estate is vested in and belongs exclusively to pursuer, or those deriving right to fish through him.

3. The defender has recently, in contravention of pursuer's rights, and in the face of repeated warnings to desist, fished in said waters, and the present action has therefore been rendered necessary.

4. The value of said fishing rights is £ [*or* does not exceed £50 by the year].

PLEA IN LAW.

The pursuer, as heritable proprietor of the said estate, is entitled to decree, with expenses, as craved.

4. Declarator and Removing on Conventional Irritancy in Feu-Charter.

Sheriffdom of at .

A. B. [*designation*], proprietor of the estate of X. in the parish of Y. and county of Z., *Pursuer*,

against

C. D. [*designation*], feuar of acres on said estate, *Defender*.

The demand of the pursuer is—

For declarator that defender has incurred an irritancy of said feu.

Therefore the pursuer craves the Court—

To find and declare that in terms of a feu-contract granted by pursuer in favour of defender, dated and recorded in the Division of the General Register of Sasines applicable to the county of the day of , the defender was bound, within two years from , to erect upon the subjects therein described [*describe obligation as in feu-contract*], and that defender has failed to implement the said obligation, and has thereby incurred the irritancy specified in said feu-contract and forfeited his title to the ground therein feued; that the said feu-contract has become void, and that pursuer is entitled to enter into possession of said subjects and dispose thereof: To ordain the defender, within such time as the Court may appoint, to flit and remove from said subjects, and failing his doing so, to grant warrant for his summary ejection: To interdict defender from interfering with pursuer, or others deriving right from him, in the possession of said subjects; and to find defender liable in expenses in the event of his offering opposition hereto.

Condescendence.

1. The pursuer is heritable proprietor of the estate of X., conform to [*set out pursuer's title*], and as such is the immediate lawful superior of the subjects feued to defender as after mentioned.

2. By the feu-contract mentioned in the crave hereof, and in consideration of the feu-duty and other prestations therein provided, the pursuer feued to defender [*describe or refer to subjects*].

3. By said feu-contract it was *inter alia* provided [stipulations as to building, &c., and irritancy clause].

4. The defender, though required to do so, has failed to implement

the obligations contained in said feu-contract, and has in consequence incurred the irritancy therein provided for.

5. The value of said subjects and erections is £ [*or* does not exceed £1000].

PLEA IN LAW.

The defender having failed to implement the obligations contained in said feu-contract, and having thereby incurred the irritancy provided for, pursuer is entitled to decree, with expenses, as craved.

5. Declarator of Irritancy and Removing ob non solutum canonem.

(*See also* REMOVING, No. 1.)

Sheriffdom of at .

A. B. [*designation*], superior of the lands of X. in the parish of Y. and county of L., *Pursuer*,

against

C. D. [*designation*], feuar of acres on pursuer's estate, and E. F. [*designation*], the only heritable creditor of the said C. D., disclosed by a search for twenty years prior to the raising of this action, *Defenders*.

The demand of the pursuer is—

For declarator that defender has incurred an irritancy of said feu *ob non solutum canonem*.

Therefore the pursuer craves the Court—

To find and declare that defender is two years in arrear in payment of the feu-duty of £ payable to pursuer half yearly by equal instalments at Whitsunday and Martinmas in respect of a feu-contract dated , and recorded , and has thereby incurred an irritancy of said feu *ob non solutum canonem*; that the said feu-contract has become void, and that pursuer is entitled to enter into possession of said subjects and to dispose of them: To ordain the defender, within such time as the Court may appoint, to remove from said subjects, and failing his doing so, to grant warrant for his summary ejection: To interdict defender from interfering with pursuer or others deriving right from him in the possession of said subjects; and to find defender C. D. liable in expenses, including those of the search for heritable creditors of said C. D., and the defender E. F. also liable in expenses, jointly and severally with C. D., in the event of his offering opposition hereto.

CONDESCENDENCE.

1. The pursuer is heritable proprietor of the estate of X., conform to [*pursuer's title*], and as such immediate lawful superior of the feu after described.

2. By the feu-contract described in the crave hereof, and in consideration of the feu-duty and other prestations mentioned therein, the pursuer feued to the defender [*describe or refer to subjects*].

3. In terms of said feu-contract the feu-duty due by defender to pursuer was £ per annum, payable by equal instalments at Whitsunday and Martinmas. Said feu-duty is at present two years in arrear.

4. The value of said subjects is £ [*or* does not exceed £50 by the year or £1000 in all].

5. The defender E. F., who is called as a party in terms of Rule 110 of the Sheriff Courts (Scotland) Act, 1907, is the only heritable creditor of the defender C. D., disclosed by a search for twenty years.

PLEA IN LAW.

The defender C. D. being two years in arrears in payment of said feu-duty, decree of declarator and removing should be granted in terms of the Act 1597, c. 250, with expenses, as craved.

6. Declarator of Right of Way.

(a) Public Right of Way.

Sheriffdom of at .

A. B. [*designation*] and C. D. [*designation*], *Pursuers*,

against

E. F. [*designation*], proprietor of the estate of X. in the parish of Y. and county of Z., *Defender*.

The demand of the pursuers is—

For declarator that there exists a public right of way over a pathway on defender's estate, leading from to .

Therefore the pursuers crave the Court—

To find and declare that there exists a public right of way for the passage of foot passengers [and vehicles, horses, carts, and cattle] over the pathway on defender's estate of X., leading from to , and shown by a red line on the map [*or* plan] produced herewith: To interdict defender from interfering with pursuers or other members of the public in the lawful use of said pathway, and to ordain defender to remove all obstructions preventing such use; and to find defender liable in expenses.

CONDESCENDENCE.

1. The defender's estate of X. is bounded on the north by the public road leading from to , known as the X. Road, and is intersected at a point about a mile and a half from the village of by the public road leading from to , known as the Y. road.

2. There is a pathway through defender's estate from the X. Road to the Y. Road, which begins at a point on the first-mentioned road marked L on the plan produced, and terminates at a point on the Y. Road marked M on said plan, running in the direction shown by the red line on said map, and marked A, B, C, D, E.

3. The said pathway has been used without interference or dispute for forty years and upwards, or from time immemorial, by the public as a passage for pedestrians [and for vehicles, horses, carts, and cattle] as the shortest and most direct route between the villages of and . By the use of said pathway the distance between the two villages is reduced by about a mile.

4. The defender has recently deprived the public of the benefit of said pathway by placing locked gates at its termini on the said public roads, and by erecting signboards intimating that the pathway is private. The defender's said actions are an unwarrantable and illegal interference with the right of passage enjoyed by the public from time immemorial.

PLEA IN LAW.

The defender having interfered with the right of way enjoyed by the public for forty years, as condescended on, pursuers are entitled to decree, with expenses, as craved.

(b) Servitude Right of Way.

Sheriffdom of at .

A. B. [*designation*], proprietor of the farm of X. in the parish of and county of , *Pursuer*,

against

C. D. [*designation*], proprietor of the estate of Y. lying between pursuer's farm and the public road leading to , *Defender*.

The demand of the pursuer is—

For declarator that pursuer has a right to a servitude road leading from his farm to the said public road.

Therefore the pursuer craves the Court—

To find and declare that pursuer has a right to a servitude road through defender's said estate leading from pursuer's farm to

the public road leading to , for himself, his tenants, and servants, for the passage of foot-passengers [vehicles, horses, carts, and cattle], and that by the route shown by a red line on the plan herewith produced and marked A: To interdict the defender from interfering with pursuer, his tenants, or his servants in their lawful exercise of said right of way, and to find defender liable in expenses.

CONDESCENDENCE.

1. The pursuer's farm, which is shown on the plan produced, is distant about a mile from the road. The only access to pursuer's farm from said road is by a pathway through the defender's estate, indicated by a red line on the map produced.

2. The pursuer and his authors for forty years and upwards have used said pathway for the passage of pedestrians [and of vehicles, horses, and cattle] without protest or hindrance from the defender or his predecessors.

3. The defender has recently placed a locked gate at the terminus of said pathway at its junction with the road, and another at a point distant about 200 yards from pursuer's farm, whereby pursuer and his servants and others are prevented from making such use of said pathway as they are entitled to, and as pursuer and his authors have enjoyed from time immemorial.

PLEA IN LAW.

The defender having interfered with the right to the servitude road prescriptively enjoyed by pursuer and his authors for forty years, decree should be granted, with expenses, as craved.

7. Declarator that no Right of Way Exists.

Sheriffdom of at .

A. B. [*designation*], proprietor of the lands of X. in the parish of and county of , *Pursuer*,

against

C. D. [*designation*] and E. F. [*designation*], *Defenders.*

The demand of the pursuer is—

For declarator that there exists no right of way over pursuer's lands from the public road leading from to .

Therefore the pursuer craves the Court—

To find and declare that there exists no public right of way for

foot-passengers, vehicles, horses, carts, or cattle from the place known as , on the public road from M. to N. at the point marked A on the plan herewith produced, leading westwards through the said lands of X. to , and thence southwards to the march of the pursuer's lands at the point D., as shown by the red line marked on said plan: To interdict the defenders from entering upon or passing over pursuer's lands, or from interfering with pursuer's peaceable possession of said lands, or with the gates or fences erected by pursuer thereon, and to find the defenders or either of them liable in expenses in the event of their offering opposition hereto.

Condescendence.

1. The pursuer is the proprietor of the lands of X., which he purchased from in the year . At the date of said purchase there existed a private road from the place known as through the pursuer's lands to , as shown by the red line on the plan produced, which was used by pursuer's predecessors, and has since been used by pursuer, as a private road for the purpose of [*state what road intended for*]. The public have not at any time during the last forty years possessed the right to use said road, though the pursuer has occasionally permitted friends and neighbours to make use thereof on isolated occasions.

2. The pursuer desires to have said road kept private, and he has accordingly placed locked gates at the points marked A and D on said plan, and has erected fences at various points along the route thereof. He has also placed notice boards at various points intimating that the road is private.

3. Notwithstanding said precautions and repeated warnings, the defenders, on or about , destroyed said gates and fences, and insisted in trespassing on pursuer's lands by using said road as a public passage.

4. Defenders have intimated to pursuer that they refuse to admit his right to close said road to the public, and the present action has therefore become necessary.

Plea in Law.

The pursuer, as proprietor of the said lands, over which there exists no servitude right of way, is entitled to decree, with expenses, as craved.

8. Declarator and Interdict against Pollution of Stream.

(*See also* INTERDICT, No. 4; POLLUTION OF RIVERS.)

Sheriffdom of at .

A. B. [*designation*], proprietor of the lands of X. in the parish of Y. and county of Z., *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator that pursuer is entitled to have the water of the burn transmitted past or through his said lands in an unpolluted state fit for the use of man and beast, and for interdict against the defender from polluting said stream.

Therefore the pursuer craves the Court—

To find and declare that the pursuer is entitled to have the water of burn transmitted past or through his lands of X. in an unpolluted state, fit for the use of man and beast: To interdict the defender from polluting said water or from discharging into it directly or indirectly anything which renders it unfit for the use of man and beast; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The burn flows past or through pursuer's lands of X., of which it forms the southern boundary, for a distance of yards. Pursuer's property includes the *solum* of said stream up to the middle line thereof.

2. Till quite recently the said stream has from immemorial time, or at least for forty years, flowed past the pursuer's said lands in a pure and unpolluted state. Pursuer and his predecessors have been in use to water the cattle on said lands from said burn, and to [*any other use*], and pursuer is entitled to the use and enjoyment of said stream in its natural state and free from any pollution.

3. The defender has recently erected works in the village of , which is situated on the banks of said stream about a mile from pursuer's said estate, and has begun to discharge from said works noxious matters or fluids into said stream, whereby the said stream is polluted and rendered unfit for the use of man and beast.

4. The pursuer has suffered considerable injury and loss in consequence of said pollution, but though repeatedly remonstrated with defender continues to discharge noxious matter into said stream,

thereby polluting it and rendering it unfit for the use of man or beast.

PLEA IN LAW.

The pursuer, as proprietor of said estate, having right to have the water in said stream transmitted through or past his said estate, unpolluted and fit for the use of man and beast, and defender having polluted same, the pursuer is entitled to decree, with expenses, as craved.

9. Declarator and Implement of Sale of Licensed Business and Damages.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator that defender is bound to implement the contract dated for the sale of the goodwill of the licensed business carried on by defender at , and for damages.

Therefore the pursuer craves the Court—

To find and declare that defender is bound to implement the contract dated between pursuer and defender for the sale of the goodwill of the licensed business carried on by defender at , and of the stock-in-trade and fittings connected therewith, by delivering to pursuer the certificate and license in his name to sell exciseable liquors in said premises: To ordain defender to deliver said certificate and license to pursuer: To concur with pursuer in nominating an arbiter to determine the value of said stock-in-trade and fittings, and on payment by pursuer of £ , and the sum to be determined by said arbiter, to cede possession to pursuer of said premises and the stock-in-trade and fittings therein: To grant a decree against defender for payment to pursuer of £ , with interest from the date of citation, as damages, and of £ as damages for each day, from the date of citation till delivery of said certificate and license to pursuer; and failing said implement delivery and payment within such time as the Court may appoint, to grant a decree against the defender for payment to pursuer of £ , with interest from the date of citation, as damages, and to find defender liable in expenses.

CONDESCENDENCE.

1. The defender, who carries on a wine and spirit business at , on agreed to sell to pursuer the goodwill of his business for the sum of £ , the stock-in-trade and fittings to be taken over at a price to be agreed on by an arbiter to be mutually chosen by the parties. It was a condition of the contract that the sale would be conditional on the pursuer obtaining a transfer of the license.

2. To enable pursuer to obtain a transfer of the said license, it is necessary that pursuer should produce, along with his petition for transfer, the existing certificate and license.

3. The pursuer has accordingly requested the defender to deliver said certificate and license, but the defender refuses or delays to do so. The pursuer has thus been prevented from applying for a transfer at the Transfer Court held on .

4. The pursuer estimates the damage already sustained by him at £ per day. In the event of defender refusing to implement his contract, the pursuer will suffer damage to the extent of not less than £ .

PLEAS IN LAW.

1. The defender having agreed to sell the said business, goodwill, and stock-in-trade, and to deliver the said certificate and license to pursuer, and having failed to implement his said contract, pursuer is entitled to decree of declarator and implement, with expenses, as craved.

2. The pursuer, having suffered damage through the failure of defender to implement his said contract, is entitled to decree for damages, with expenses, as craved.

10. Declarator of Right to Rescind Sale of Heritable Property.

Sheriffdom of at .

A. B. [*designation*], proprietor of the house, No. Street, , *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator that pursuer is entitled to rescind the contract of sale between him and defender of the property at .

Therefore the pursuer craves the Court—

To find and declare that under a contract of sale of the property at , entered into between pursuer and defender by letter of offer and relative acceptance dated respectively

and , defender was bound to pay pursuer £ as the price thereof, at the term of , that defender has failed to make timeous payment of said sum, and that by reason of said failure pursuer is entitled to rescind the said contract; and to grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, as damages, and with expenses.

CONDESCENDENCE.

1. The defender by the said letter of offered to purchase pursuer's said house for £ , and pursuer by said letter of accepted said offer. Said letters, which are herewith produced, constitute a contract of sale of pursuer's house for £ .

2. By said contract the price of the said house was payable at the term of last. The defender, however, failed to make payment of the price at said date, and pursuer avers that he has no means to enable him to do so now.

3. The pursuer, who desires to rescind the said contract and to find another purchaser for his house, estimates that through defender's failure to implement the said contract he has suffered damage amounting at least to £ .

PLEA IN LAW.

The defender having failed to implement his share of said contract, and pursuer having suffered damage in consequence, pursuer is entitled to decree, with expenses, as craved.

11. Declarator by Executor of Right of Property in Shares Registered in Third Party's Name.

Sheriffdom of at .

A. B. [*designation*], executor-dative duly confirmed of the deceased C. D. [*designation*], *Pursuer*,

against

E. F. [*designation*] and the X. Company, Limited [*address*], for any interest they may have, *Defenders*.

The demand of the pursuer is—

For declarator of a right of property in shares registered in defender E. F.'s name in the books of the X. Company, Limited.

Therefore the pursuer craves the Court—

To find and declare that shares of £ each, presently registered in the books of X. Company, Limited, in the name of the said E. F., belonged to the said C. D. at his death, and now form part of his executry estate, and that pursuer is entitled to have them transferred to his name as executor foresaid: To ordain the defender E. F. to execute valid transfers of said shares in pursuer's name as executor foresaid, and to pay to pursuer any dividends received by him in respect of said shares since the said C. D.'s death; and failing such transfer and payment, to grant a decree against E. F. for payment to pursuer of £ , and to find E. F. liable in expenses, and the X. Company, Limited, also liable in expenses in the event of their offering opposition hereto.

Condescendence.

1. The pursuer is the brother and executor-dative of the deceased C. D., and the defender is .

2. In or about , 19 , the said C. D. purchased shares in the X. Company, Limited, the certificates therefor being taken in his own name.

3. In or about , 19 , the said C. D. being desirous of increasing his voting power in the said company, transferred of the said shares numbered to the name of the said E. F., and to whose name the said shares were duly transferred and the certificates therefor issued by the company.

4. Notwithstanding the said transfer, the new certificates so issued in favour of E. F. were delivered to the said C. D. and were retained by him, and were at the date of his death still in his possession. The dividend warrants in respect of said shares were also regularly indorsed by the said E. F. and paid into bank to the said C. D.'s credit.

5. The pursuer has duly entered on his office of executor and has given up an inventory of the deceased C. D.'s estate, including the said shares, which are valued at £ . He has called upon E. F. to execute and deliver valid transfers thereof, but this he refuses or delays to do.

Plea in Law.

The said shares having formed part of the executry estate of the deceased C. D., the pursuer is entitled to decree, with expenses, as craved.

12. Declarator that Goodwill is Heritable and for Payment of Amount thereof.

Sheriffdom of at .

A. F. [*designation*], younger brother and heir-at-law of the deceased E. F. [*designation*], *Pursuer*,

against

C. F. [*designation*], widow and executrix-dative of the said deceased E. F., as such and as an individual, *Defender*.

The demand of the pursuer is—

For declarator that the goodwill of the said E. F.'s business belongs to pursuer, and for payment of the amount thereof.

Therefore the pursuer craves the Court—

To find and declare that the goodwill of the wine and spirit business carried on by the said E. F. at the time of his death is heritable and belongs to pursuer as E. F.'s heir-at-law, and to grant a decree against defender, as executrix foresaid as an individual, for payment to pursuer of £ , the amount received by her from G. H. [*designation*] as the price thereof, with interest from till payment, and with expenses.

Condescendence.

1. The said E. F. died on , intestate and without issue. The defender was on deceased executor-dative of her said husband by the Sheriff of .

2. At the time of his death E. F. carried on a wine and spirit business at . In this business was offered for sale by defender, offerers being invited to offer for the goodwill of the business and to take the stock, furniture, and fittings at a valuation.

3. The said G. H. accepted this offer, and on or about paid £ to the defender.

4. The goodwill of said business, being heritable, belonged to pursuer as the heir-at-law of the deceased E. F. The defender has been repeatedly called upon by pursuer to pay him £ , the price received by her therefor, but she refuses or delays to do so.

Plea in Law.

The goodwill of the said deceased E. F.'s business being heritable, the pursuer as his heir-at-law is entitled to decree, with expenses, as craved.

13. Declarator of Servitude Right of Access.

(*See also* COMMON PROPERTY; INTERDICT, No. 1.)

Sheriffdom of at .

A. B. [*designation*], proprietor of , *Pursuer*,

against

C. D. [*designation*], proprietor of No. Street,

Defender.

The demand of the pursuer is—

For declarator that the pursuer possesses a servitude right of access by the passage or entry between his property and the Street, .

Therefore the pursuer craves the Court—

To find and declare that there is a right of access by the passage or entry, No. Street, , extending between pursuer's property and the said street in favour of pursuer's said property; that defender is not entitled to obstruct said passage or impede pursuer's right of access thereby: To interdict defender from obstructing said passage or impeding pursuer's right of access thereby, and to grant interim interdict: To ordain defender to remove all obstructions or buildings placed by him therein or thereon which interfere with pursuer's right of access; failing defender's doing so within such time as the Court may appoint, to grant warrant to pursuer to do so, and to grant decree against defender for payment to pursuer of the expense thereby occasioned; and to find defender liable in expenses.

CONDESCENDENCE.

1. Between the pursuer's property and the said street there is a passage or entry forming No. of said street, by which the pursuer has access from his property to the said street. The pursuer by his titles has a right of ingress and egress by said passage.

2. From time immemorial the said passage has been feet in width or thereby, sufficient to admit of the passage of carts and other vehicles.

3. The defender has recently taken down the house at No. Street, which lies immediately to the east of said passage, and proposes to rebuild it with the boundary wall feet further west than formerly, thus reducing the breadth of the passage from to feet, and rendering it fit for foot-passengers only.

4. The defender has also laid down a large quantity of stones, lime,

and rubbish in said entry, and thus obstructed pursuer's access to his property.

5. The pursuer has called upon defender to remove said obstructions and to allow pursuer his former right of access unimpeded, but defender refuses or delays to do either.

PLEA IN LAW.

The pursuer, having a right of access to his said property by said passage, is entitled to decree, with expenses, as craved.

14. Declarator of Obligation Altius non tolendi.

Sheriffdom of at .

A. B. [*designation*], proprietor of No. Street, *Pursuer*,

against

C. D. [*designation*], proprietor of No. in said street, *Defender*.

The demand of the pursuer is—

For declarator of obligation *altius non tolendi* by defender and for interdict.

Therefore the pursuer craves the Court—

To find and declare that the defender is not entitled to alter the front elevation of his house, No. Street, beyond its present height: To interdict the defender from so doing, and to grant interim interdict; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer's title to his said house consists of a feu-charter in his favour by M. R. [*designation*], dated , and recorded in the Register of Sasines for the county of the .

2. By said charter it is provided that the house to be erected on the ground thereby feued should be storeys and attics in height, and no more, and that the front thereof should be built according to an elevation prepared by superior's architect, and should not at any time be altered therefrom.

3. The superior also in said feu-charter, which is herewith produced, bound himself to insert the like conditions in all feu-charters in said street.

4. The defender's title to his said house also consists of a feu-charter by the said M. R., dated , and recorded in the said Register

, which contains clauses in terms identical with those above referred to in pursuer's title.

5. The defender is about to make alterations on his said house, including *inter alia* the heightening of the front from its present height, as shown on the plan referred to in his and pursuer's feu-charters, to storeys and attics, and also to divide the house into two separate dwelling-houses.

6. The said alterations will injuriously affect the pursuer's property, and although he has called upon defender to desist therefrom, he refuses or delays to do so.

PLEA IN LAW.

The pursuer, in virtue of the mutual obligations in his and defender's titles, being entitled to insist in the present action, and the alterations proposed by defender being in violation of said obligations, the pursuer is entitled to decree, with expenses, as craved.

15. Declarator non edificandi.

(*See* SERVITUDE.)

16. Declarator of Obligation to Keep Open and Stock Shop.

(*See also* PLENISH.)

Sheriffdom of at .

A. B. [*designation*], proprietor of the shop, No. Street, , *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator that defender leased from pursuer the shop, No. Street, , and that he is bound to occupy said shop and carry on the business of grocer.

Therefore the pursuer craves the Court—

To find and declare that the defender leased from the pursuer the shop, No. Street, , for years from Whitsunday 19 , at a yearly rent of £ , for the purpose of carrying on the business of a grocer: To ordain the defender to occupy said premises, to carry on the business of a grocer therein, and to stock and plenish said premises to an extent sufficient to afford pursuer security for the half-year's rent due at Martinmas next; and failing his doing so, to grant a decree against the defender for payment to pursuer

of £ , as damages; and to find defender liable in expenses.

CONDESCENDENCE.

1. By missives dated and , the defenders leased from pursuer the premises, No. Street, , for years from Whitsunday 19 , at a rent of £ , and on the other terms therein specified, one of which was that the said premises should be occupied as a grocer's shop.

2. In or about 19 , the defender closed said shop, and refuses to carry on the business of grocer therein, or to occupy and stock the premises.

3. In the event of defender allowing said premises to remain unoccupied for the remainder of the term let, they will deteriorate in value, and the pursuer will suffer loss to an extent of at least £ .

PLEAS IN LAW.

1. The defender having contravened the terms of said lease, as condescended on, pursuer is entitled to decree of declarator and plenishing, with expenses, as craved.

2. The pursuer having suffered damage through defender's failure to implement his obligations, as condescended on, and the sum sued for being reasonable, pursuer is entitled to decree therefor, with expenses, as craved.

17. Declarator and for Erection of March Dyke.

Sheriffdom of at .

A. B. [*designation*], proprietor of the lands of X. in the parish of and county of , *Pursuer*,

against

C. D. [*designation*], proprietor of the lands of Y. in the said parish and county, *Defender*.

The demand of the pursuer is—

For the erection of a march dyke or fence between pursuer's and defender's lands.

Therefore the pursuer craves the Court—

To find and declare that the defender is bound to concur with pursuer in erecting a march dyke or fence between their said lands, and to pay one-half of the expense thereof, and that the most suitable fence is a strong wire fence: To grant warrant

to pursuer to erect such a fence accordingly at the sight of a person to be appointed by the Court; thereafter, on completion of said fence, to grant a decree against the defender for payment to the pursuer of one-half of the expense connected therewith; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer's and defender's lands are contiguous, and there is at present no fence between them. Both estates at the march are let as grazing farms, and much trouble and annoyance is caused by stock straying from one estate to the other. [*State circumstances which make wire fence most expedient.*]

2. The defender refuses or delays to concur with pursuer in erecting a fence between their respective estates.

PLEA IN LAW.

There being no march fence between the said properties, and such fence being necessary, pursuer is entitled to decree, with expenses, as craved.

18. Declarator and for Repair of March Fence.

Sheriffdom of at .

A. B. [*ut supra*],
against
C. D. [*ut supra*].

The demand of the pursuer is—

For the repair of the march fence between pursuer's and defender's properties.

Therefore the pursuer craves the Court—

To find and declare that the march fence or dyke between pursuer's and defender's said properties is ruinous and insufficient: To remit to E. F. [*designation*], or such person as the Court may select, to examine and report on the present state of said fence, and the repairs necessary to make it sufficient: To grant warrant to pursuer to execute such repairs at the sight of the reporter; and on their completion to grant a decree against defender for payment to the pursuer of one-half of the expenses connected therewith, and of the remit and other procedure; and to find defender liable in expenses in the event of his offering opposition hereto.

CONDESCENDENCE.

1. The pursuer's and defender's said properties are separated by a march fence or dyke, which has fallen into such a state of disrepair that, if not soon repaired, it will become ruinous.

2. The pursuer has requested the defender to concur with him in having said dyke or fence repaired, but he refuses or delays to do so.

PLEA IN LAW.

The march fence between pursuer's and defender's properties having become ruinous, and defender having refused to concur with pursuer in repairing it, decree should be granted, with expenses, as craved.

B. Miscellaneous Declarators.

19. Declarator and Proving of Tenor of Deed.

A. B. [*designation*], *Pursuer*,

against

C. D., &c. [*names and designations of parties having interest to dispute contents of document, the tenor of which is sought to be proved, as* e.g. *the trustees and beneficiaries of deceased under prior trust-deed*].

The demand of the pursuer is—

For declarator of the tenor of the trust-disposition and settlement of the deceased E. F. [*designation*], dated

Therefore the pursuer craves the Court—

To find and declare that the trust-disposition and settlement of the deceased E. F., dated , was of the following or similar tenor, viz. [*set out the deed verbatim*]; and that an extract of the decree to follow hereon shall be as valid and effectual for all purposes as the original deed, if extant, would be; and to find the defenders, or any of them, liable in expenses in the event of their offering opposition hereto.

CONDESCENDENCE.

1. The said E. F., shortly before his death, which occurred on , executed the trust-disposition and settlement, the terms of which are narrated in the crave.

2. The said trust-disposition and settlement was prepared by Mr. X. Y., solicitor in , on the instructions of the deceased. The terms of the said deed were submitted to the deceased in draft upon

the day of , John Smith, a clerk of said X. Y., attending on the deceased to read over the draft and receive it back from him with any directions or alterations he might effect or wish effected.

3. The said draft was accordingly read over and explained to deceased by the said John Smith. The deceased made certain alterations thereon in his own handwriting, and thereafter handed it to the said John Smith with a request that it might be duly engrossed and returned to him for his signature.

4. The said draft was thereafter engrossed by John Brown, a clerk in X. Y.'s employment, and the completed deed was carefully compared by said John Brown and X. Y. with the draft. On the completed deed was submitted by the said John Smith to the deceased for his signature, and on that date, in presence of said John Smith and , who subscribed the said deed as witnesses thereof, it was duly signed by the deceased.

5. The said draft, which was an exact duplicate of the deceased's trust disposition and settlement, was thereafter, by the said John Smith, duly filed amongst the other drafts of similar deeds in X. Y.'s possession, and placed within an iron safe in X. Y.'s office.

6. The completed deed was thereafter entrusted to the said John Brown, in order that he might complete the testing clause. Instead of completing the said deed as he was instructed to do, the said John Brown placed it within his desk, intending to engross it that afternoon. He was, however, indisposed on the afternoon of said day, and was obliged to return home, and the deed was left in his desk unfinished.

7. On the night of said day X. Y.'s office was burned to the ground, everything in it, including the said deed, being burned. The iron safe, however, in which was the draft of the said deed, remained intact, and the draft was duly recovered unharmed.

8. On the day following said fire the deceased, E. F., became unconscious, and was never afterwards able to speak. He died on without recovering consciousness.

9. The deed executed by the deceased on was his last will and testament, and the pursuer is anxious to prove its tenor. The defenders deny that the deceased executed any such deed, or, if he did, they aver that it was destroyed by the deceased himself.

Plea in Law.

The said deed having been destroyed in the manner condescended on, pursuer is entitled to decree, with expenses, as craved.

20. Another Form of the Same.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator of the tenor of an acknowledgment by defender to pursuer, dated .

Therefore the pursuer craves the Court—

To find and declare that an acknowledgment or letter of date , granted by defender to pursuer was in the following or similar terms, viz.:—"Dear Sir,—With reference to the assignation, dated 2nd October 1905, granted by you in my favour of policy of assurance, No. 9017, effected by you on your own life with the Scottish Widows' Fund, I acknowledge that although the same is *ex facie* absolute, it is truly granted in security of any sums which may from time to time be due by you to me, or for which I may become security on your account. Yours truly, James Smith;" and that an extract of the decree to follow hereon shall be as valid and effectual for all purposes as the said acknowledgment or letter, if extant, would have been; and to find the defender liable in expenses in the event of his offering opposition hereto.

Condescendence.

1. On , the pursuer, being in somewhat embarrassed circumstances, borrowed £100 from the defender, and on again borrowed £50. No acknowledgment beyond an I.O.U. was given at the time for either of these sums.

2. In last the defender wrote pursuer requesting repayment of these advances. The pursuer was, however, unable to pay more than £30 to defender at the time. Pursuer, who was again financially embarrassed, owing to the failure of a firm of distillers to pay him a debt of £300 due to him, proposed that if defender would consent to become guarantor for an overdraft with the Bank of Scotland to the extent of £200, pursuer would assign a policy of insurance over his own life, No. 9017, with the Scottish Widows' Fund for £750, which policy defender might retain as security for the repayment of the overdraft and the £120 which pursuer then owed him. To this proposal the defender assented.

3. The said overdraft was thereafter duly obtained with the Campbeltown branch of the Bank of Scotland, and the pursuer, in accordance with the arrangement effected with defender, assigned said policy in his favour, intimation of which was duly made to the Scottish Widows' Fund.

4. Thereafter, in accordance with a stipulation made by pursuer, defender wrote pursuer in the terms mentioned in the crave hereof.

5. The pursuer is now 59 years of age, and the sum contained in said policy of insurance, namely, £750, with bonus additions, becomes payable to him or his assignees on his attaining the age of 60.

6. The said letter of defender to pursuer has gone amissing, and pursuer believes that in mistake he burned it along with a number of other letters for which he had no further use.

7. The pursuer has now paid up the amount of the overdraft and the sums which he borrowed from defender, and desires to obtain his said policy of insurance from defender. Defender, however, maintains that said policy was assigned to him absolutely, and that no such letter of acknowledgment was written by him. Defender accordingly refuses to deliver up said policy, and the present action is therefore necessary.

PLEA IN LAW.

The letter of acknowledgment from defender to pursuer having gone amissing or been destroyed, pursuer is entitled to decree, with expenses, as craved.

21. Declarator that Absolute Assignation of a Life Policy is a Trust.

Sheriffdom of at .

A. D. [*designation*], eldest son and executor-dative of the deceased C. D. [*designation*], *Pursuer*,

against

E. D. [*designation*], brother of the said C. D., *Defender*.

The demand of the pursuer is—

For declarator that an absolute assignation of a policy of insurance for £ over pursuer's life with the Scottish Widows' Fund, dated , was an assignation in trust for behoof of the said C. D. and his heirs and assignees.

Therefore the pursuer craves the Court—

To find and declare that an assignation, dated on or about of a policy of insurance for £ upon the life of the

deceased C. D. issued by the Scottish Widows' Fund, numbered and dated , was not absolute, but was in trust in the person of the defender for behoof of the said C. D. and his heirs and assignees, and was granted to the defender in security of certain sums advanced by him, amounting in all to £ or thereby, and that the said policy or its value was redeemable by the deceased C. D., and is still redeemable by the pursuer as executor foresaid on payment of such sum as may be due to defender: To grant a decree against the defender for payment to the pursuer of £ , or such sum as may be ascertained to be the balance of the proceeds of said policy of insurance after deducting the sum legally due by the said C. D. to defender, with interest from till payment; and to find defender liable in expenses.

Condescendence.

1. On or about the said C. D. insured his life with the Scottish Widows' Fund for £ , the policy numbered , being taken in his own name.

2. Between the years and the deceased C. D. became indebted to the defender for certain sums advanced by him to pay the premiums on the said policy of insurance, and, in consideration of these advances on , assigned the said policy to defender. The said assignation is an *ex facie* absolute assignation, but was truly granted in security of the sums due by the said C. D. to defender.

3. The said C. D. died on or about , and on or about the defender applied for and received payment from the insurance company of the sums contained in said policy, amounting, with bonuses declared thereon, to £ . The amount then due by the said C. D. to defender was £ , leaving a balance of £ . The pursuer has repeatedly called on defender to make payment of the said balance, but he refuses or delays to do so.

Pleas in Law.

1. The said conveyance having been granted in security, the pursuer is entitled to decree of declarator and to an accounting with defender for the contents of the policy thereby conveyed, as craved.

2. The sum sued for being justly due and resting-owing by the defender, decree should be pronounced therefor, with interest and expenses, as craved.

22. Declarator of Validity of Testamentary Writing and for Payment of Legacy therein.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*] and E. F. [*designation*], trustees nominated and appointed by and acting under the trust-disposition and settlement of the deceased G. H. [*designation*], dated , and recorded in the Books of Council and Session , *Defenders.*

The demand of the pursuer is—

For declarator of the validity of a codicil left by the deceased G. H., dated , and for payment of the legacy thereby bequeathed.

Therefore the pursuer craves the Court—

To find and declare that the writing dated , executed by the deceased G. H., and recorded in the Books of Council and Session , is a valid testamentary writing, to which the defenders are bound to give effect, and that the legacy of £ therein bequeathed to the pursuer is in addition to and not in substitution for the legacy of £ bequeathed to pursuer by the said G. H. in his said trust-disposition and settlement: To grant a decree against defenders, as trustees foresaid, for payment by them of £ , with interest from till payment; and to find defenders liable in expenses.

CONDESCENDENCE.

1. The said deceased G. H. died on , leaving a trust-disposition and settlement dated , whereby he left his whole means and estate to the defenders in trust for the purposes therein mentioned. The defenders have accepted office, and are proceeding to administer the said trust estate.

2. By his said trust disposition and settlement the said G. H. directed his trustees to "pay to my nephew A. B., in the event of his surviving me, the sum of £ ."

3. Besides the said trust-disposition and settlement the said G. H. left an informal writing or codicil, dated , which is in the following terms:—[*quote terms*]. The said writing is holograph of the said G. H.

4. The defenders refuse to admit that said writing forms part of the

testamentary settlement of the said G. H., regarding it merely as a memorandum by the said G. H. for the information of his trustees. They have accordingly intimated to pursuer that in any event they do not admit that the bequest of £ therein mentioned in favour of pursuer is in addition to the legacy of £ bequeathed to him by the said trust-disposition and settlement.

5. The defenders have paid the pursuer £ , being the amount of the bequest contained in the said trust-disposition and settlement, but decline to pay him £ , the sum bequeathed to him by the said writing.

PLEA IN LAW.

The said writing being part of the testamentary settlement of the said deceased G. H., and the sum thereby bequeathed to pursuer being in addition to the legacy contained in the said trust-disposition and settlement, the pursuer is entitled to decree, with expenses, as craved.

23. Declarator of Validity of Improbative Deed.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator that the deed herewith produced is valid.

Therefore the pursuer craves the Court—

To find and declare that the deed or writing herewith produced was validly subscribed by the defender and attested by E. F. [*designation*] and G. H. [*designation*] as witnesses on the date it bears, and is a valid conveyance of the heritable property, No. Street, ; and to find the defender liable in expenses, in the event of his offering opposition hereto.

CONDESCENDENCE.

1. On or about , the pursuer, who is the proprietor of the subjects, No. Street, , concluded a contract with G. H. [*designation*] for the sale of said subjects, the price agreed to be paid therefor being £ .

2. The said subjects were purchased by pursuer from J. K. [*designation*] on the conveyance in his favour, being the document herewith produced.

3. The agents for the said G. H., as the intending purchaser of said property, have intimated to pursuer that G. H. declines to implement

his agreement to purchase said property, on the ground that said document is not a valid or effectual conveyance thereof in pursuer's favour.

4. The reasons assigned by the said agents as acting for G. H. against the validity of the said conveyance are [*state them, as,* e.g. *that the name of a witness as appearing in the testing clause differs from that witness's actual subscription*].

5. As the said G. H. refuses to implement his contract for the sale of said subjects until the said conveyance is judicially declared to be valid, the present action is necessary.

PLEA IN LAW.

The said conveyance having been subscribed by the granter thereof, and bearing to be attested by two witnesses subscribing, the pursuer is entitled, on proof of due subscription and attestation thereof, and in terms of sec. 39 of the Conveyancing (Scotland) Act, 1874, to decree, with expenses, as craved.

24. Declarator of Donation mortis causa.

NOTE.—*Since the doctrine of donation* mortis causâ *was first definitely settled in the case of Morris* (5 *M.* 1036), *there have been many cases before the Courts in which the validity of such donations have been in dispute. The essentials of a valid donation* mortis causâ *are not yet quite clearly defined. Being a quasi-testamentary act, proof of the donor's intention is all-important, and this makes each case in a manner special.*

Actions arising out of real donations usually take the form of declarators by the donee of the validity of the gift, and for delivery, or by the donor's representatives for simple delivery. Such donations seem invariably to be of moveables, and almost always of deposit-receipts. Actions with reference to them are therefore competent in the Sheriff Court.

Sheriffdom of at .

A. B. [*designation*], *Pursuer,*

against

C. D. [*designation*], executor-dative duly confirmed of the deceased E. D. [*designation*], *Defender.*

The demand of the pursuer is—

For declarator that the delivery by the deceased E. D. to the pursuer of a deposit-receipt, No. , for £ , dated , granted by the Bank of Scotland, was a donation *mortis causâ.*

Therefore the pursuer craves the Court—

To find and declare that the delivery by the said deceased E. D. to

the pursuer on or about of the deposit-receipt, No. , for £ , granted by the Bank of Scotland, was a valid donation *mortis causâ* of the sum therein contained, and the interest thereon, to pursuer; and to grant authority to the said bank to pay the same to pursuer; and to find defender liable in expenses, in the event of his offering opposition hereto.

CONDESCENDENCE.

1. The said deceased E. D. died at on the , aged eighty-one years. He was a widower, and his family, consisting of sons and daughters, are all married. For many years prior to E. D.'s death pursuer acted as his housekeeper, and took charge of his money affairs.

2. In consideration of her long and faithful services, the said E. D. frequently informed pursuer that he would not see her want, and that after his death she would not be left unprovided for.

3. Shortly before his death the said E. D. informed pursuer that he had a sum of £ lying on deposit-receipt with the Bank of Scotland, which he intended to donate to her as some provision for her old age. He accordingly gave pursuer the keys of his desk, instructed her where to find it, and asked her to bring it to him, which she did.

4. The said E. D. thereupon endorsed the said receipt and handed it to pursuer, instructing her to retain it till his death.

5. The pursuer thereupon took custody of the said receipt, and has retained it in her possession ever since.

6. The defender, as the executor of the said E. D., now claims the property of said receipt, and has interpelled the said bank from paying the amount contained therein to pursuer. The present action has therefore been rendered necessary.

PLEA IN LAW.

The said deposit-receipt having been delivered to pursuer *animo donandi et intuito mortis*, pursuer is entitled to decree, with expenses, as craved.

25. Declarator of Right to Bequest.

Sheriffdom of at

The X. Total Abstinence Society and A. B. [*designation*], president; C. D. [*designation*], secretary; E. F. [*designation*], treasurer; and J. K., L. M.,

and N. O., members of committee; being the office-bearers of said society, and authorised to sue on its behalf, *Pursuers*,

against

X. Y. [*designation*] and Y. Z. [*designation*], trustees nominated by and acting under the trust-disposition and settlement, dated , and recorded in the Books of Council and Session , of the deceased K. G. [*designation*], *Defenders*.

The demand of the pursuers is—

For declarator that the bequest of £ by the deceased K. G. to the X. Temperance Society is payable to the pursuers.

Therefore the pursuers crave the Court—

To find and declare that the bequest made by the deceased G. K. in his trust-disposition and settlement, dated , and recorded as aforesaid, to the X. Temperance Society is a valid bequest to pursuers: To grant a decree against defenders as trustees foresaid for payment to the pursuers of £ at the term of next, with interest therefrom till payment; and to find the defenders liable in expenses, in the event of their offering opposition hereto.

Condescendence.

1. The deceased K. G. died on , leaving the trust-disposition and settlement referred to.

2. The said K. G. was a strong advocate of temperance, and frequently, both by his presence and by donation, assisted the work carried on by the pursuers.

3. By the provisions of his said trust-disposition he bequeathed a sum of £ to the X. Temperance Society. No such society is known to exist under that name, but the pursuers, who are known as the X. Total Abstinence Society, are the only society in X. professedly existing for the promotion of temperance or total abstinence.

4. The pursuers believe and aver that under said bequest their society was meant to benefit, but the defenders profess that without judicial authority they do not feel themselves in safety to make payment of the said bequest to pursuers.

Plea in Law.

The pursuers, being the society intended by the said G. H. to benefit under his said trust-disposition, are entitled to decree, as craved.

26. Declarator of Right to Revoke Trust-Deed.

Sheriffdom of at .

A. D., wife of C. D. [*designation*], with the consent and concurrence of the said C. D. as her curator and administrator-in-law, and the said C. D. for his interest, *Pursuers*,

against

E. F. [*designation*] and G. H. [*designation*], trustees nominated and appointed by, and acting under a deed of provision and trust granted by, the said A. D., dated , *Defenders*.

The demand of the pursuers is—

For declarator that a deed of provision and trust by the said A. D. in favour of defenders is revocable and has been revoked.

Therefore the pursuers crave the Court—

To find and declare that a deed of provision and trust, dated , by the said A. D., in favour of the defenders, is revocable by A. D., at least with consent of her husband C. D.; that A. D. with such consent has duly revoked the same, and that defenders are bound to reinvest A. D. in the estate thereby conveyed: To ordain defenders to execute all deeds necessary to complete such reconveyance, and to find the defenders liable in expenses, in the event of their offering opposition hereto.

Condescendence.

1. Prior to the pursuer's marriage, which took place on , A. D. executed the said deed of provision and trust, whereby she conveyed her whole estate, amounting to £ , to the defenders as trustees for the purposes therein named.

2. The purposes of the said deed of provision are as follows:—[*narrate trust purposes*].

3. The pursuer desires to revoke said trust and resume possession of her estate, but the defenders, alleging that the trust constituted by said is irrevocable, refuse to denude, at least without judicial authority.

Plea in Law.

The said deed of provision and trust being revocable, pursuer is entitled to decree, as craved.

27. Declarator that Trustees' Investment is Ultra Vires.

Sheriffdom of at .

A. B. [*designation*], son of and a beneficiary under the trust-disposition and settlement of G. B. [*designation*], dated .

and recorded in the Books of Council and Session ,

Pursuer,

against

C. D. [*designation*] and E. F. [*designation*], trustees acting under the said trust-disposition and settlement of the deceased G. B., as such trustees and as individuals, *Defenders*.

The demand of the pursuer is—

For declarator that the investment by defenders of trust funds in the purchase of preference shares in the X. Company was *ultra vires* of them, and for repayment of the sum so invested.

Therefore the pursuer craves the Court—

To find and declare that the investment by defenders or either of them on of £ belonging to the said trust estate in the purchase of preference shares in the X. Company was *ultra vires* of them as trustees foresaid: To ordain defenders jointly and severally to make payment to the trust estate of said sum with interest, and the expenses of the transfer and purchase of said shares, but under deduction of any sums paid to the trust estate as dividends on said shares, and failing their doing so within such time as the Court may appoint, to grant a decree against the defenders for payment to the said trust estate of £ or such other sums as may be ascertained to be the damage arising to the said trust estate through the purchase of said shares by defenders; and to find the defenders jointly and severally liable in expenses.

CONDESCENDENCE.

1. Under the said trust-disposition and settlement of the deceased G. B. the pursuer is entitled [*set out pursuer's interest in the trust estate*].

2. The said G. B. died on , and the defenders accepted the office of trustee, conferred upon them by the said trust-disposition and settlement, and proceeded to administer the estate.

3. On the defenders invested £ of the trust funds in the purchase of preference shares of the X. Company, Limited. This investment was made without the consent of the beneficiaries under the said trust-disposition and settlement.

4. The said investment was not such as the defenders, as trustees foresaid, were entitled or authorised to make at common law, or under the Trusts Acts, or under the said trust-disposition and settlement. The provisions of said trust-disposition and settlement, relative to the investment of the trust funds, are as follows:—

5. In making said investment the defenders grossly failed to act with the care and discretion which a prudent man of business would have exercised in his own affairs, for the following reasons:—

6. Since the date of the investment the preference shares of the said X. Company have greatly depreciated in value, and the said shares, if sold at present, would not realise more than £ . There is no prospect that the said shares will rise in value, and the sum of £ has therefore been wholly lost to the trust estate through the negligence and failure in duty of defenders.

7. The defenders have been called upon to make good the loss sustained by the trust estate by said investment, but they refuse or delay to do so.

PLEA IN LAW.

The said investment being *ultra vires* of the defenders as trustees foresaid, and the trust estate having suffered damage through their negligence and failure in duty, pursuer is entitled to decree, with expenses, as craved.

28. Declarator of Partnership.

Sheriffdom of at

A. B. [*designation*], trustee on the sequestrated estates of C. D. & Co. [*designation*], *Pursuer*,

against

E. F. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator that defender is a partner in the business of the said C. D. & Co.

Therefore the pursuer craves the Court—

To find and declare that, in terms of a minute of agreement entered into between C. D. [*designation*] and the defender, dated , the defender became a partner in the business of C. D. & Co. thereby agreed to be carried on; that defender still is a partner in said business and liable as such, and that pursuer is entitled to recover from defender, as such partner, such sums as may be necessary to pay the lawful debts of the legal creditors of said firm after the firm's estate has been exhausted; and to grant a decree against defender for payment to pursuer, as trustee foresaid, of £ , or such sum as may be ascertained to be the amount of the said debts remaining unpaid after the firm's estate has been exhausted, with

interest from the date of citation till payment, and with expenses.

CONDESCENDENCE.

1. By minute of agreement, dated , entered into between C. D. and defender, herewith produced, it was agreed that the said C. D. should purchase certain subjects in X. and also the business of then carried on there by . The money required for said purchase was contributed to the extent of £ by the said C. D., and to the extent of £ by the defender.

2. By said agreement it was provided [*state provisions founded on by pursuer*].

3. The said agreement was acted on, and the business was conducted in accordance therewith till the firm's sequestration on . The pursuer was appointed trustee on said sequestrated estates, conform to act and warrant dated , herewith produced.

4. The estates of C. D. & Co. and C. D. are insufficient to pay the creditors of the firm in full, there being a deficiency of £ required to meet the balance due to the creditors after distributing the estate among them.

5. The defender refuses to admit that he is a partner of said firm, or that he is otherwise bound for its debts and obligations.

PLEA IN LAW.

The defender being, on a sound construction of said minute of agreement, liable as a partner in the firm of C. D., or otherwise bound for its debts and obligations, pursuer is entitled to decree, with expenses, as craved.

29. Declarator as to Number, &c., of Waygoing Sheep Stock.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], lately tenant of the farm of X., in the parish of Y., under lease between the pursuer and him, dated , and E. F. [*designation*] and G. H. [*designation*], the arbiters, and J. K. [*designation*], the oversman appointed under and in terms of a deed of submission entered into between the pursuer and the defender, the said C. D., dated , *Defenders.*

The demand of the pursuer is—

For declarator as to the number of sheep which defender as tenant foresaid is bound to deliver to pursuer.

Therefore the pursuer craves the Court—

To find and declare that the sheep stock on the said farm of X., which the defender, the said C. D., is, under and in terms of said lease, bound as at to deliver and the pursuer to receive at valuation, ought neither to exceed nor be under the average sheep stock upon the said farm during the currency of the said lease; that the said average stock is sheep, in the proportions following [*set out numbers, &c.*], or such other number of sheep and in such proportions as shall be ascertained in the course of the process to follow hereon; and that the sheep stock presently on said farm of X., as the same has been counted by the said E. F., G. H., and J. K., is in excess of said average and in excess of the number which the defender, the said C. D., is entitled and bound to deliver and the pursuer to accept and pay for under the said lease: To ordain the defender, the said C. D., to remove from the said farm the excess in number of the various classes of sheep, taking sheep of an average quality from each class, or, in the event of the numbers of any particular class being deficient, to supply the deficiency in said class, and that with sheep of a quality and value equal to the average of the sheep of that class presently on the farm, in order that the sheep stock may be reduced or restored to the average stock of the said farm, as the same shall be ascertained as aforesaid, and that at the sight of a person of skill to be appointed by the Court: To interdict the defenders, the said E. F., G. H., and J. K., from issuing any award, interim or final until the number of sheep to be valued by them is reduced or restored, in terms of the above crave; with expenses against the defenders, the said E. F., G. H., and J. K., but that only in the event of their appearing and offering opposition hereto, and with expenses against the defender, the said C. D., in any event.

CONDESCENDENCE.

1. The pursuer is heritable proprietor of the estate of Z., in the parish of Y. and county of W., including *inter alia* the farm of X.

2. By lease, dated , the pursuer let to the defender C. D. the said farm of X. for the term of years from .

3. By said lease the defender bound himself, at the expiration of

the lease, to leave all his sheep stock on the said farm, and to allow the same to be taken over by the defender at a value to be fixed by arbitration in the manner therein provided, declaring "that the said sheep stock shall not exceed the average stock kept on the said farm during the currency of this tack," and that "the incoming tenant shall be bound to accept the said sheep stock as it shall be valued as after mentioned, or, failing this, the proprietor shall be bound to take the same himself at the same valuation."

4. The said lease came to an end at . Prior thereto the defender intimated that he was not to renew his lease of the said farm. The pursuer and defender accordingly entered into a submission, in terms of the said lease, for the purpose of having the said sheep stock counted and valued, and appointed as arbiters the defenders E. F. [*designation*] and G. H. [*designation*]. The said arbiters accepted the reference, and appointed the defender J. K. [*designation*], oversman.

5. On the said arbiters and oversman proceeded to the said farm of X., and proceeded to count the said sheep stock in presence of the defender and the pursuer's agent. As soon as the number of sheep was ascertained, it became apparent that the stock upon the farm was much greater than it was at the time of the defender's entry, and greater than the average number on the farm during the said lease.

6. The stock on the said farm at the time of the defender C. D.'s entry thereto, and which was taken over by him, consisted of , in the proportions following [*give them*]. Said stock was a full and sufficient stock for the said farm, and was the proper stock which the said farm was capable of carrying. The stock now on the farm consists of , in the proportions following [*give them*]. Said stock is greatly in excess of the average stock kept on said farm during the currency of the said lease. Said stock has been largely increased lately with a view to waygoing, and does not represent the average stock *in bonâ fide* kept upon the said farm, or which could have been kept according to the rules of proper and ordinary management.

7. On the pursuer's agent wrote to the defender, pointing out that the said stock was much in excess of the proper number, and offering to consider any records he might produce of the average stocks kept during the lease. The defender, however, maintains that the pursuer is bound to take over and pay for the whole of the said stock at present upon the farm, and the present action has thus been rendered necessary.

PLEAS IN LAW.

1. Under and in terms of said lease the pursuer is only bound to take over and pay for, and the defender C. D. is only entitled to deliver,

the average stock upon the said farm during the currency of the said lease.

2. The defender having increased the said stock in the later years of the said lease to a number over and above the average stock, and over and above the stock the said farm is capable of carrying, is bound to remove the excess therefrom as concluded for.

3. In the circumstances, the defenders, E. F., G. H., and J. K., should be interdicted as craved.

30. Declarator of Revocation of Donation between Spouses.

(*See* DONATIONS, REVOCATION OF.)

Declinature, Joint Minute Waiving.—

See MINUTE.

Deed, Declarator of Validity of.—

See DECLARATOR, No. 23.

Deforcement.—

See REPARATION.

Delay, Damages for.—

See REPARATION.

Delict, Damages for.—

See REPARATION.

Delivery.

NOTE.—*An action for the delivery of property is an action* ad factum præstandum, *and is one of the cases in which, as a rule, an order for specific performance will be granted. The penalty for non-fulfilment of the order is imprisonment. But if it is not desired to enforce performance by imprisonment, the action may be laid alternatively for delivery or for damages in case of non-delivery. The same principle would seem to apply to cases of quasi-delivery, that is, where a person is bound to do something tantamount to delivery, such as signing a deed by which property is conveyed.*

1. For Delivery of Moveable Articles [or for Payment of their Value].

Sheriffdom of at

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For delivery of the articles specified in the crave hereof [*or* for payment of their value].

Therefore the pursuer craves the Court—

To ordain the defender, within days, to deliver to the pursuer (1), &c. [*enumerate articles*] [and failing such delivery, to grant a decree against defender for payment to the pursuer of £ , with interest from the date of citation]; and to find defender liable in expenses.

CONDESCENDENCE.

1. The articles above enumerated are the property of pursuer. [*Narrate the circumstances in which they came into defender's possession.*]

2. The defender, in whose possession and under whose control said articles now are, refuses to deliver them to pursuer, though repeatedly called on to do so.

3. The value of said articles is £ .

PLEA IN LAW.

The pursuer, being the owner of said articles, is entitled to their delivery, or payment of their value, with expenses, as craved.

NOTE.—*This form may be adapted to meet the cases of actions for* (1) *delivery of an article lent to defender;* (2) *of goods delivered to defender on sale and return and not sold;* (3) *of goods entrusted to defender for sale and not sold, as,* e.g. *to a commercial traveller;* (4) *by a trustee in bankruptcy for delivery of property belonging to the bankrupt;* (5) *by the owner against a trustee in bankruptcy for articles in the bankrupt's possession, &c.*

2. For Delivery of Goods Purchased, or for Damages.

Sheriffdom of at .

A. B. [*designation*], *Pursuer,*

against

C. D. [*designation*], *Defender.*

The demand of pursuer is—

For delivery of 100 tons Bent splint coal, or payment of £ .

Therefore the pursuer craves the Court—

To ordain defender within days, and on payment of £ , to deliver to pursuer 100 tons Bent splint coal, and failing such delivery, to grant a decree against the defender for payment to pursuer of £ , with interest from the date of citation; and to find defender liable in expenses.

CONDESCENDENCE.

1. On 1st May 1910 the defender sold the pursuer 100 tons Bent splint coal, to be delivered at between 13th and 20th June 1910, at the price of shillings per ton, payable on delivery, conform to memorandum or sale note herewith produced.

2. The defender has failed to deliver said coal as agreed, though called upon by pursuer to do so, and still refuses or delays to do so. The pursuer was, and still is, willing to take delivery of said coal and to pay the stipulated price, the amount of which, £ , he has consigned in the hands of the Clerk of Court.

3. In consequence of defender's failure to deliver said coal as agreed on, pursuer has suffered damage to an extent not less than £ . [*Specify details of damage, as,* e.g. *that the price of Bent splint coal has risen in the interval, &c.*]

PLEA IN LAW.

The pursuer, having purchased said coals, is entitled to their delivery on payment of the stipulated price, and failing such delivery, to damages, with expenses, as craved.

3. For Delivery of Article Purchased or for Repetition of Price Paid and Damages.

Sheriffdom of at .

A. B. [*designation*], *Pursuer,*

against

C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For delivery of an engraving, or for payment of £ [*price thereof and damages*].

Therefore the pursuer craves the Court—

To ordain the defender within days to deliver to pursuer a mezzotint engraving known as "Boyhood's Reverie," or "Master Lambton," first state, by Samuel Cousins, after Sir Thomas Lawrence, purchased by pursuer on , and failing such delivery, to grant a decree against defender for payment to the pursuer of £ , with interest from the date of citation; and to find defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is a connoisseur and collector of articles of vertu, and especially of old prints and engravings. Observing the picture

described in the crave in defender's shop window, he entered and asked the price. On defender's informing him that its price was £ , pursuer at once purchased and paid for it, and defender undertook to have it delivered at pursuer's house next morning.

2. Defender now refuses to deliver said picture to pursuer, and pursuer believes that he has sold it to some other person.

3. The said engraving is a very valuable one, and its value is well known to collectors. If exposed in the London salerooms, pursuer believes that it would fetch not less than £ .

4. By defender's failure to deliver said engraving the pursuer estimates that he has suffered loss to an extent of at least £ , the difference between the price paid to defender and that at which pursuer estimates he would have sold said engraving.

PLEA IN LAW.

The pursuer, having purchased and paid for said engraving, is entitled to its delivery, and failing delivery, to repetition of the price paid therefor, and to damages, with expenses, as craved.

4. For Delivery of Title-Deeds.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For delivery of title-deeds belonging to pursuer in defender's possession.

Therefore the pursuer craves the Court—

To ordain the defender within days to deliver to pursuer the whole title-deeds, writs, and other documents belonging to pursuer in possession of or under the control of defender, and in particular [*specify particular documents, &c., required*]; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The defender has for some time past acted as law-agent for pursuer, and as such has been entrusted with the pursuer's title-deeds, and in particular with the documents specified in the crave, which documents are still in his possession or under his control.

2. The pursuer has paid to the defender the whole amount due to him for professional services, but though repeatedly applied to, defender

refuses or delays to deliver the titles and other papers belonging to pursuer.

PLEA IN LAW.

The writs, titles, and other documents specified being pursuer's property, he is entitled to decree, with expenses, as craved.

5. Delivery of Business Books, &c., and Failing Delivery for Damages.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For delivery of the business books and other documents belonging to pursuer in defender's possession or under his control.

Therefore the pursuer craves the Court—

To ordain the defender within days to deliver to pursuer all business books and other documents or papers relating to, or which were used by defender in connection with, the business of , carried on by him at , prior to , and which are now in his possession or under his control, and failing such delivery, to grant a decree against the defender for payment to the pursuer of £ as damages; and to find defender liable in expenses.

CONDESCENDENCE.

1. The defender formerly carried on business at as a .

2. On the pursuer purchased from the defender for £ the goodwill, plant business, and book debts of the said business, conform to memorandum and agreement of sale herewith produced.

3. The pursuer on paid the agreed on price to defender, who continued to carry on the said business till , when the pursuer entered into possession.

4. The business books and other papers used by defender in carrying on said business, which were purchased by pursuer in terms of said agreement, have been removed by defender, and are now in his possession or under his control. Though called on by pursuer, defender refuses to deliver said books and papers to pursuer.

5. In consequence of defender's refusal to deliver said books and papers, which are essential to pursuer in the carrying on of said business, pursuer has suffered great inconvenience and loss, which is moderately estimated at £ .

PLEA IN LAW.

The pursuer, being the owner of said business, books, and papers, is entitled to decree, with expenses, as craved.

6. Delivery of Cargo.

(*See* SHIPPING, No. 20.)

7. Delivery of Bills of Lading.

(*See* SHIPPING, No. 21.)

8. Delivery of Illegitimate Child by its Mother.

(*See also* GUARDIANSHIP.)

Sheriffdom of at .

A. B. [*designation*], *Pursuer,*
against
C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For delivery by defender of pursuer's female illegitimate child, E. B.

Therefore the pursuer craves the Court—

To ordain the defender, within days, to deliver to pursuer her female illegitimate child, E. B., and failing his doing so, to grant warrant to officers of Court to search for and take possession of said child and deliver her to the pursuer; and to interdict the defender from thereafter molesting or in any way interfering with pursuer or the said child, or with anyone in whose custody said child may be for the time being; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer, who is unmarried, is the mother of the said E. B., who was born on .

2. [*Narrate the circumstances under which defender came to have possession of the child, as,* e.g., the pursuer, being at the time unable to provide a home for said child, on or about entered into

an arrangement with defender for its board, pursuer agreeing to pay him shillings per week therefor. In terms of said agreement pursuer has regularly paid defender the said weekly sum.]

3. The pursuer is now able to provide a home for said child, and she desires to have said child restored to her. The defender, however, refuses to deliver said child to pursuer.

PLEA IN LAW.

The pursuer, being entitled to the custody of said child, is entitled to decree, with expenses, as craved.

9. By Father for Restoration of Legitimate Child.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For delivery by the defender of pursuer's son [*name*], presently in defender's custody.

Therefore the pursuer craves the Court—

To ordain the defender to deliver to the pursuer his son [*name*], presently in her custody or under her control, and failing her doing so within such period as the Court shall appoint, to grant warrant to officers of Court, &c. [*as in preceding style*].

CONDESCENDENCE.

1. The pursuer and defender were married in on 19 , and thereafter lived together at . Their son, the said , was born on 19 at , and is now years of age.

2. The pursuer and his wife lived happily together until the year 19 , when the defender fell into dissipated habits [*give details*]. The pursuer repeatedly remonstrated with defender, but without effect.

3. On 19 , the defender, who had been absent from her home for , called at the school, , which the said child was then attending, and took him away with her. The pursuer has since both personally and through the police endeavoured to discover where the child has been placed, but without success, and the defender refuses to give any information thereanent.

4. The pursuer is in a good position as , and earns about per week. The defender has no means of her own or other resources for maintaining the said child. In these circumstances the pursuer desires to have the said child restored to his custody, as craved.

PLEA IN LAW.

The pursuer, as father of the said child, is entitled to the custody thereof, as concluded for.

10. Delivery of Goods Stopped in transitu.

(*See* INTERDICT.)

Demurrage, Claim for.—*See also* PAYMENT, No. 7.

Sheriffdom of at .

A. B. & Co. [*designation*], owners of the s.s. of , *Pursuers*,

against

C. D. [*designation*] [against whom arrestments *jurisdictionis fundandæ causâ* were used on], *Defender.*

The claim of the pursuer is—

For payment of £100, as demurrage, due under charter-party dated .

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £100, with interest from the date of citation, and expenses. [And to grant warrant, &c.]

CONDESCENDENCE.

1. By charter-party dated , the pursuers hired to defender the said s.s. , to proceed on a voyage from Glasgow with a certain cargo to Bilbao in Spain, and there to load a cargo of iron-ore and to return with same to Glasgow.

2. By said charter-party it is provided that twenty working lay days in all should be allowed for loading said cargo at Glasgow and discharging it at Bilbao, and for loading said cargo of iron-ore at Bilbao and discharging it at Glasgow, and that in the event of the vessel's detention by or through the fault of defender in loading and discharging said cargoes beyond the stipulated twenty lay days, the defender should pay to the pursuers £10 per day in name of demurrage for each day the said vessel should be so detained.

3. The said outward cargo was accordingly taken on board said vessel at Glasgow, and thereafter duly discharged at Bilbao, and the said cargo of iron-ore was duly shipped at Bilbao and discharged at Glasgow to the order of defender.

4. In loading and discharging said cargoes at Glasgow and Bilbao, thirty-five running days were occupied in all, five of said days consisting of Sundays and holidays. The said vessel was therefore unduly detained in loading and unloading, through the fault or delay of the defender or of his agents in Bilbao, ten days beyond the number of lay days stipulated by said charter.

5. The number of days employed in discharging the said cargo at Bilbao, after the said vessel was admitted to pratique, was six, as is marked on said charter-party by E. F., agent for the defender at that port, and the remainder of the stipulated lay days having been expended in loading and discharging the cargo as aforesaid, before the vessel was loaded with her homeward cargo at Bilbao, the pursuers protested at that place for demurrage against the defender and his agents there in usual form.

6. The defender is therefore due to the pursuer the sum of £100, being £10 per day for ten days, as demurrage in terms of the said charter-party, conform to account herewith produced.

7. The pursuer has called on defender to pay said sum, but defender refuses or delays to do so.

PLEA IN LAW.

The sum sued for being demurrage incurred through the fault of the defender, the pursuer is entitled, in terms of the said charter-party, to decree, with expenses, as craved.

Denude, to, a Trust.—*See* DECLARATOR.

Deposit-Receipt, for Declarator of Right to.—*See* DECLARATOR, No. 24.

Descriptive Firm, for Sequestration of.—*See* BANKRUPTCY, No. 5.

Descriptive Firm, by, against Former Manager.—*See* ACCOUNTING, No. 3.

Desertion.—*See* ALIMENT, No. 3; HUSBAND AND WIFE.

Designation of Parties.—*See* INSTANCE.

Designs, Infringement of.—*See* INFRINGEMENT; INTERDICT, No. 10.

Detention.—*See* REPARATION; SHIPPING, No. 10.

Diet.—*See* MOTION, No. 5.

Diligence.—*See* ADJUDICATION; ARRESTMENT; CONSTITUTION; FURTHCOMING; JUDGMENTS EXTENSION; LAWBURROWS; MAILLS AND DUTIES; MULTIPLEPOINDING; POINDING; POINDING OF THE GROUND; REPARATION; SEQUESTRATION FOR RENT.

Discharge.—*See* BANKRUPTCY, Nos. 28, 29; JUDICIAL FACTOR; MULTIPLEPOINDING; SHIPPING, No. 20.

Disclamation, Minute of.—*See* MINUTE, No. 13.

Disinter, for Warrant to.

NOTE.—*When a dead body has been committed to the grave it is in general secure against disturbance, at least until the process of disintegration is complete; but if relatives wish to remove the remains of their dead, warrant to do so may be obtained, on cause shown, either in the Court of Session or the Sheriff Court. If possible, it is advisable to procure beforehand the assent of all immediate relatives, and also a report from the keeper of the cemetery as to the practicability of the exhumation. If the assent of near relatives, other than the petitioner, is not got, the others must be called as respondents,* e.g. *if warrant is wished to disinter the body of a parent or brother, the widow and other brothers and sisters should either be parties to the application, or evidence of their consent,* e.g. *by letter, should be produced along with the petition, or they must be called as respondents.*

Sheriffdom of at .

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For warrant to disinter the body of E. B., pursuer's mother.

Therefore the pursuer craves the Court—

To grant warrant to the superintendent of the X. cemetery at Y. to disinter the body of E. B., wife of the deceased C. B. [*designation*], sometime residing at , which was interred in lair No. in said cemetery, belonging to the said deceased C. B., on , and with all other powers necessary for the disinterment of said body, in order that it may be removed to the churchyard of for reinterment there.

CONDESCENDENCE.

1. The said deceased C. B. for some time resided at Y. During his residence there the said E. B., his wife, pursuer's mother, died on , and was buried on , in the lair No. , in the X. cemetery there. No other members of the family are buried there.

2. In the year the said deceased C. B. removed from Y. to Z., where he continued to reside down to the time of his death. During his residence at Z., F. B., his son, and G. B., his daughter, died, and were buried in ground belonging to deceased C. B. in the churchyard of Z. The said C. B. died on , and was also interred in said churchyard.

3. The pursuer now desires that the body of his mother should be removed from the X. cemetery and reinterred in the said churchyard of Z. beside the bodies of her husband and her son and daughter. This wish is concurred in by the whole surviving members of the family, as appears from the letters of consent herewith produced.

4. Since the burial of pursuer's mother, the said E. B., no other interments have taken place in the said lair at X. cemetery, and the proposed disinterment is not attended by any practical difficulties, as appears from the certificate by M. N., the superintendent of the X. cemetery, herewith produced.

PLEA IN LAW.

The disinterment craved being reasonable, and the operations proposed being practicable, warrant should be granted, as craved.

Dismantle.—*See* SELL, WARRANT TO; SHIPPING, No. 16; WARRANT.

Dispense with Husband's Consent, to.—*See* HUSBAND AND WIFE.

Disqualification, Voiding of Election on Ground of.—*See* ELECTIONS, No. 4 (*c*).

Dissolution.—*See* PARTNERSHIP.

Division and Sale.—*See* COMMON PROPERTY; COMMONTY.

Division of Burgh into Wards.—*See* ELECTIONS, No. 1.

Division of Parishes Act, &c., under.—*See* CHURCH.

Dog, Damages for Bite of.—*See* REPARATION, No. 12.

Dog, Damages for Sheep-Worrying.—*See* REPARATION, No. 20.

Dominus litis, for Relief against.—*See* RELIEF, No. 8.

Donations, Revocation of, between Spouses.

NOTE.—*Briefly, it may be said that all transactions or donations by which one spouse is materially enriched at the expense of the other are revocable by the donor at any time. The form of the transaction is immaterial, and the rule will be applied to,* e.g. *a renunciation by the wife for an inadequate consideration of her rights of succession in her husband's estate. The rule does not apply to reasonable gifts or presents, nor to a reasonable* mortis causâ *provision by a solvent husband for his wife if she be not otherwise provided for.*

The donor, or, if insane, his curator bonis, *may revoke at any time. His creditors may revoke even after his death, and sequestration is* ipso facto *a revocation. The right to revoke is not lost by the donee's death, but it is barred by the donor's divorce. The revocation may be in any form, express or implied, and need not even be intimated to the donee. An assignee of the donee has no higher right than the donee unless in the case of moveables acquired in ignorance of the condition.*

An action is frequently necessary either to decide the validity of the revocation or to enforce the return of the subject of donation. Such an action is competent in the Sheriff Court. The usual conclusions are—

(1) *Declaring the revocation effectual, and* (2) *ordaining the defender to deliver, or transfer, or convey* (*as the case may be*) *the subject of gift.*

Sheriffdom of at .

A. B. [*designation*], husband of defender, *Pursuer*,

against

C. B., his wife, and residing with him, *Defender.*

The demand of the pursuer is—

For declarator that a conveyance by pursuer to defender of the subjects aftermentioned, dated , and recorded , and the transfer by pursuer to defender of £300 contained in a deposit-receipt with the Bank of Scotland, dated , were donations *inter uxores stante matrimonio* and revocable, and that they have been revoked.

Therefore the pursuer craves the Court—

To find and declare (1) that the conveyance by the pursuer to the defender, by disposition in her favour dated , and recorded in the division of the General Register of Sasines for the county of , of the subjects therein described, and (2) that the transfer and delivery by the pursuer to the defender of £300, contained in a deposit-receipt issued by the Bank of Scotland in name of the pursuer and dated , were truly donations by the pursuer to the defender *stante matrimonio;* and that pursuer is entitled to revoke and has duly revoked said donations: To ordain the defender, at pursuer's expense, to execute and deliver to pursuer a valid conveyance of said subjects, free of all incumbrances and charges, and failing her doing so within such time as the Court may appoint, to grant a decree against her for payment to the pursuer of £1000, with interest from the date of citation: To grant a decree against defender for payment to pursuer of £300, with interest aforesaid; and to find defender liable in expenses.

CONDESCENDENCE.

1. The pursuer, who is a retired merchant residing at , about two years ago married the defender, who is much younger than himself.

2. Shortly after his marriage the defender induced him to convey to her the subjects (valued at £1000) and the sum of money mentioned in the crave, which represent more than half pursuer's whole means and estate. The said conveyances were purely gratuitous donations, for which pursuer received no consideration whatever.

3. In the month of the defender, without assigning any reason, left pursuer's house and went to reside with her mother at . The pursuer has made repeated efforts to induce her to return, but without success. In reply to a letter from pursuer defender wrote the letter produced herewith, in which she says "she has made up her mind never to return to him."

4. On receipt of said letter pursuer wrote her, formally revoking his said donations, and demanding that the subjects donated should be reconveyed to him. The defender, however, refuses to take any notice of pursuer's communications.

PLEA IN LAW.

The said donations, being *stante matrimonio*, are revocable, and having been revoked, pursuer is entitled to have them or their value restored to him, with expenses, as craved.

Drainage District.—*See* PUBLIC HEALTH.

Ecclesiastical Buildings Act.—*See* CHURCH.

Ejection.—*See also* REMOVING.

NOTE.—*Ejection, as a substantive remedy, is only available against persons having no apparent title to the premises occupied by them,* e.g. (1) *the heir of a liferenter who refuses to remove on the liferenter's death;* (2) *a mere squatter,* e.g. *a bankrupt is to go with his trustee;* (3) *an employee who, on the termination of his employment, refuses to remove from premises occupied as incident to his employment;* (4) *a seller who refuses to give possession to the purchaser of the lands sold;* (5) *a tenant who refuses to plenish the subjects let to him; and* (6) *the debtor in a bond and disposition in security who is in personal occupation of the security subjects, and may in default and after requisition in terms of the Heritable Securities Act,* 1894, *be ejected by the creditor.*

It is a summary process, the warrant to eject being obtained on an ex parte *statement without citation, the period allowed for removal is very short (usually forty-eight hours), and no charge is needed on the decree. It follows that any, even a slight, flaw in the petition or procedure may prove fatal and give rise to actions of damages. Thus not only illegal ejection but even the mere obtaining an illegal warrant to eject will found an action for damages.*

A warrant of ejection may be brought under review by way of appeal (Robb v. *Brearton,* 22 *R.* 885).

1. By Trustee in Cessio, for Ejection of Debtor.

Sheriffdom of at .

A. B. [*designation*], trustee for behoof of the creditors of C. D. [*designation*], *Pursuer*,

against

The said C. D., *Defender*.

The demand of the pursuer is—

For warrant to summarily eject the defender from the premises, No. Street, .

Therefore the pursuer craves the Court—

To grant warrant to officers of Court to summarily eject the defender, his family, dependants, and effects, from the premises occupied by him at No. Street, : [To interdict him from again entering, or preventing pursuer entering and occupying, the same]; and to find defender liable in expenses.

CONDESCENDENCE.

1. On decree of *cessio bonorum* of the estates of the defender was granted by the Sheriff of , and the pursuer was duly appointed trustee for behoof of the defender's creditors. On the defender executed a disposition *omnium bonorum* in pursuer's favour, which is herewith produced, by which was conveyed the house presently occupied by him at No. Street, foresaid.

2. In order to realise said property the pursuer has advertised it for sale by public roup. The defender, however, declines to allow intending purchasers to see the house, and declares that he will not cede possession thereof to a purchaser. The pursuer finds it necessary, in these circumstances, to invoke the aid of the Court to eject defender from said premises.

PLEA IN LAW.

The pursuer, as trustee and disponee foresaid, is entitled to decree, with expenses, as craved.

2. For Ejection of Discharged Employee.

Sheriffdom of at .

A. B. & Co., Limited, registered under the Companies Acts, and having their registered office at , *Pursuers*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuers is—

For warrant to summarily eject defender from the house, No. Street.

Therefore the pursuers crave the Court—

To grant warrant to officers of Court to summarily eject the defender, his family, dependants, and effects, from the dwelling-house, No. Street, and to find him liable in expenses.

CONDESCENDENCE.

1. The defender was till in the employment of pursuers, who have their works and yard at Street, aforesaid.

2. The defender was employed at said yard as gate and time keeper at a weekly wage of shillings, and in addition occupied as such the small house at No. of said street, belonging to pursuers and situated at the entrance to their said yard. The defender's wages were paid weekly.

3. On the pursuers, in consequence of defender's gross neglect of duty, gave him a week's notice to terminate his service with them, at the same time intimating that his occupancy of said house would terminate with his employment.

4. The pursuers paid off defender on , after which date he ceased to be in their employment.

5. The defender, notwithstanding, refuses to yield possession of said house, asserting that he is entitled to retain possession thereof until the ensuing term of , and the pursuers are accordingly compelled to invoke the aid of the Court to have him summarily ejected.

PLEA IN LAW.

The defender's possession of the said subjects having been incident solely to his service with pursuers, now terminated, and defender having no title to possess said subjects otherwise, pursuers are entitled to warrant, with expenses, as craved.

3. For Ejection of a Squatter.

Sheriffdom of at .

A. B. [*designation*], proprietor of the lands of X. in the parish of Y. and county of Z., *Pursuer*,

against

C. D. [*designation*], presently residing in a cottage on said estate known as the , *Defender*.

The demand of the pursuer is—

For warrant to summarily eject the defender from said cottage.

Therefore the pursuer craves the Court—

To grant warrant to officers of Court to summarily eject the

defender, his family, dependants, and effects, from the cottage on pursuer's said estate, known as , occupied by defender, and to find defender liable in expenses.

CONDESCENDENCE.

1. The cottage known as is situated on pursuer's lands, and has for some time been unoccupied.

2. The defender, finding said cottage unoccupied, took possession thereof and occupied it. Defender has no right or title whatever to occupy said cottage. The defender was at one time under-game-keeper to pursuer, but owing to his neglect of his duties he was on or about dismissed from his situation. Pursuer allowed defender to occupy said cottage for some days, in the hope that defender might obtain another situation and leave the district. The defender, however, continues to occupy said cottage against pursuer's wishes, and although repeatedly requested to leave refuses to do so.

PLEA IN LAW.

The defender's occupation of said cottage being solely at pursuer's pleasure and without legal title, pursuer is entitled to the warrant craved, with expenses.

4. By Heritable Creditor for Ejection of Proprietor (under sec. 5 of the Heritable Securities Act, 1894).

NOTE.—*Under sec.* 5 *of the Heritable Securities Act,* 1894, *whenever the debtor in a heritable security is in default in payment of interest or* (*but only after formal requisition*) *of principal, and personally occupies the security subjects, the creditor may have him ejected just as if he were an occupant without title. The most usual case where such an application would be necessary is where the creditor desires to use the power of leasing conferred by sec.* 6 *of the statute.*

No intimation seems to be required by the statute where the debtor is in arrear of interest, but where such a drastic remedy is asked it would most certainly be both more desirable and safer that the creditor should formally intimate to the debtor his intention to apply to the Court.

Sheriffdom of at .

A. B. [*designation*], *Pursuer,*

against

C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For warrant to summarily eject defender from the house, No. Street, .

Therefore the pursuer craves the Court—

To grant warrant to officers of Court to summarily eject defender, his family, dependants, and effects, from the house, No. Street, , now occupied by him; and to find defender liable in expenses.

CONDESCENDENCE.

1. By bond and disposition in security dated and recorded in the Division of the General Register of Sasines for the county of , herewith produced, the defender bound himself, his heirs, executors and successors, to pay to the pursuer, his executors and assignees, at the term of Whitsunday 19 , the sum of £ , and in security thereof disponed to the pursuer and his foresaids the said dwelling-house, No. Street, .

2. No interest has been paid on said bond since the term of Martinmas 19 , although the same has been regularly demanded by the pursuer. [*State if there has been formal requisition for payment of principal, and if so, produce certificate.*]

3. In these circumstances the pursuer desires to recover payment of the [principal and] interest both now and hereafter to become due on the said bond, and with that view proposes to let the security subjects. As these, however, are in the personal occupation of the defender, the proprietor thereof and the debtor in said bond and disposition in security, who declines to yield possession thereof, this application has become necessary, in terms of sec. 5 of the Heritable Securities (Scotland) Act, 1894.

PLEA IN LAW.

The defender being in default in the punctual payment of the interest [and after formal requisition of the principal] due under the security condescended on, and being in personal possession of the security subjects, the pursuer, as creditor in the said security, is entitled, in terms of the said statute, to warrant, as craved.

Elections, Burgh, County, and Parish Council.

NOTE.—*All elections are now governed by the Town Councils Act of* 1900, *sec.* 55 *of that statute declaring that it is to be read as the operative enactment as to elections both for county and parish councils. Only forms for burghs have therefore been given, as these can easily be adapted to the case of either county or parish council elections.*

1. Division of Burgh into Wards.

Sheriffdom of at .

The Provost, Magistrates, and Councillors of the Burgh of X., *Pursuers.*

The demand of the pursuers is—

For division of the burgh of X. into wards.

Therefore the pursuers crave the Court—

To divide the said burgh of X. into wards under and by virtue of the Town Councils (Scotland) Act, 1900: To define the boundaries of the said wards; and to fix the number of councillors to be elected for each ward.

CONDESCENDENCE.

1. [*Narrate constitution of burgh and its adoption of the Police Acts.*]

2. The said burgh of X. has never been divided into wards. Of late the population has largely increased, and now amounts to . [*Set out also any other grounds there may be showing the expediency or the necessity of a division into wards.*]

3. [*Set out the division proposed by the petitioners, including number of electors and value of lands and heritages in proposed wards, and also the allocation of councillors which they suggest.*]

PLEA IN LAW.

The said burgh never having been divided into wards, such division, being expedient, should now be made.

2. To Increase Number of Magistrates and Councillors.

Sheriffdom of at .

The Provost, Magistrates, and Councillors of the Burgh of X., *Pursuers.*

The demand of the pursuers is—

For increase of the number of magistrates and councillors of said burgh.

Therefore the pursuers crave the Court—

To ascertain and declare, for the purposes of the Town Councils (Scotland) Act, 1900, the population within the municipal boundary of the said burgh at X.: To declare that the number of magistrates and councillors of the said burgh shall be increased so as to make it correspond to the scale specified in Schedule II. annexed to the said Act: To determine when and in what manner the said increase shall be effected, and to

apportion the whole members of the said council, as increased, among the respective wards of the said burgh: To determine when and in what order the magistrates and councillors, as increased in number, shall vacate office; or to pronounce such further or other orders as the Court may deem expedient.

CONDESCENDENCE.

1. [*Present constitution of town council.*]

2. [*Narrate increase or decrease of population, and consequent discrepancy between numbers composing town council and standard prescribed in Schedule II.*]

3. [*Where burgh divided into wards, set out re-arrangement proposed by the petitioners, and reasons for any special allocation, such as number of electors, value of property, &c., in wards.*]

PLEA IN LAW.

The numbers composing the town council of the burgh of X. being now insufficient, the prayer of the petition should be granted.

3. For Authorised Excuse (from Penalties Imposed by the Corrupt Practices Act, 1890).

Sheriffdom of at .

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For an order allowing an authorised excuse for pursuer's failure to comply with the provisions of sec. 25 of the Corrupt Practices Act, 1890.

Therefore the pursuer craves the Court—

To direct such notice to be given of this application by way of intimation and advertisement as to the Court may seem proper, and after such inquiry, if any, as the Court may deem necessary, to make an order allowing an authorised excuse for the petitioner's failure (1) to transmit the return of his election expenses within the time fixed by the statute 53 & 54 Vict. c. 55, and (2) to include as part of said return the receipt for , paid by the pursuer to , and to make an order allowing the above failure and omission to be exceptions from the provisions of the said Act, which would otherwise make the same an illegal practice; or to do further or otherwise in the premises as to the Court shall seem proper.

CONDESCENDENCE.

1. The pursuer is a baker in X., and at the last municipal election in X., which took place on , was a candidate for the office of town councillor, then vacant in the ward. On the pursuer was duly elected a member of the town council of the said burgh.

2. During the pursuer's candidature, C. D. [*designation*] acted as his agent, and made all arrangements for printing of posters, advertising, hiring of committee rooms and of halls for meetings. Accounts incurred in connection with said candidature were rendered to the said C. D., and were paid by him on behalf of the petitioner.

3. [*Quote sec.* 25, *subsec.* 3 *of the Corrupt Practices Act*, 1890.]

4. On the pursuer was prostrated by a severe attack of typhoid fever, which totally incapacitated him for business for a period of over a month. In consequence of said illness the pursuer was unable to comply with the requirements of the said subsection, and the return of his election expenses was not made until , being more than six weeks after the date of the election.

5. [*Quote sec.* 25, *subsec.* 7.]

6. In these circumstances the pursuer makes the present application for an authorised excuse in virtue of the said subsection.

PLEA IN LAW.

The pursuer's failure to comply with the provisions of the statute having arisen from illness, the prayer of the petition should be granted.

4. Petitions to Void Election.

NOTE.—*Challenge of such elections on the ground of corrupt or illegal practices, disqualification, or undue return, must be made by way of election petition under the Elections* (*Scotland*) (*Corrupt and Illegal Practices*) *Act*, 1890. *Disqualification is defined by sec.* 13 *of the Town Councils* (*Scotland*) *Act*, 1900. *In cases where such petitions are competent, reduction and suspension are now excluded.*

(*a*) ON ACCOUNT OF GENERAL BRIBERY.

Sheriffdom of at .

A., B., C., and D. [*designations*], *Pursuers*,

against

X., Y., &c. [*designations*], *Defenders*.

The demand of the pursuers is—

For declarator that the election of a parish council for the parish of was wholly voided by general bribery.

Therefore the pursuers crave the Court—

To find and declare that the election of a parish council for the parish of , which took place on , was wholly avoided by general bribery, treating, undue influence, or personation: To set aside the said pretended election and declare the same null: To find the defenders liable in expenses, or to pronounce such other order in regard thereto as the Court may think proper; or to do further or otherwise in the premises as to the Court shall seem just.

CONDESCENDENCE.

1. The pursuers are four electors of the parish of , and were all qualified to vote at the election now challenged.

2. On last, an election was held in the said parish of for the purpose of electing a parish council for the said parish. The defenders are the persons who were returned as duly elected at the said election.

3. The said election was wholly null and void by reason of general bribery and treating. [*Set out details of matters complained of.*]

4. [*Set out statutory provisions that have been contravened.*]

PLEA IN LAW.

The said pretended election having been effected by general bribery, treating, undue influence, or personation, ought to be declared null and set aside.

(*b*) ON THE GROUND OF CORRUPT OR ILLEGAL PRACTICES.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator that the election of the defender as a member of the town council of the burgh of X. was voided by corrupt and illegal practices.

Therefore the pursuer craves the Court—

To find and declare that the election of the said defender as a member of the town council of the burgh of X., at the election which took place on , was avoided by corrupt and illegal practices on the part of the defender or of his agents,

and is therefore null and void: To find and declare that the pursuer was duly elected at said election, and is entitled to sit and act as a member of the council of the said burgh; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is a householder in the burgh of X., and was a candidate for a vacancy in the third ward of the said burgh. The defender was also a candidate for the said vacancy. The election was held on , and thereafter the defender was declared duly elected.

2. [*Set out the corrupt or illegal practices complained of in detail.*]

3. [*Set out the statutory provisions contravened.*]

PLEAS IN LAW.

1. The defender having, by himself or others for whom he is responsible, been guilty of corrupt or illegal practices, his election was void and should be set aside.

2. The pursuer having received the largest number of votes of the unsuccessful candidates for the said office, is entitled to be declared duly elected.

(*c*) ON GROUND OF DISQUALIFICATION.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator that defender was disqualified for election as a councillor, and that pursuer was elected a councillor, at the election of town councillors of the burgh of X., held on .

Therefore the pursuer craves the Court—

To find and declare that at 19 , when the election of town councillors of the burgh of X. was held, the defender was disqualified for being elected as a councillor, and that he has not been lawfully elected as such councillor: To find and declare that the pursuer was elected at said election, and is entitled to serve as a councillor of the said burgh: To find the respondent liable in expenses.

CONDESCENDENCE.

1. The pursuer is a baker, and resides in the burgh of X. The defender is a grocer, and also resides in said burgh.

2. On ·19 , an election was held in the said burgh for the purpose of filling up vacancies in the town council. At said election pursuer and defender were both candidates.

3. After said election the defender was *inter alios* declared returned. The pursuer received votes, being the largest number of votes received by any of the unsuccessful candidates.

4. At the time when said election was held the defender was not qualified to be elected as a councillor of the said burgh. [*Set out in detail disqualification.*]

5. [*Set out statutory provisions.*]

PLEAS IN LAW.

1. The defender being disqualified to be elected at said election, his election is void and should be set aside.

2. The pursuer having received the largest number of votes of the unsuccessful candidates, is entitled to be declared duly elected a member of the council of said burgh.

(*d*) ON ACCOUNT OF UNDUE RETURN.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator that at the election of councillors for the burgh of X. held on , defender was not, and pursuer was, duly elected a councillor of said burgh.

Therefore the pursuer craves the Court—

To find and declare that at the election of councillors for the burgh of X. the defender was not duly elected a councillor by a majority of lawful votes: To find and declare that the pursuer was lawfully elected by a majority of lawful votes at said election, and is entitled to serve as a councillor of the said burgh; and to find the defender liable in expenses; or to do further or otherwise as to the Court shall seem just.

CONDESCENDENCE.

1. The pursuer is a baker, and resides in the burgh of X. The defender is a grocer, and also resides in the burgh.

2. On an election was held in said burgh for the purpose of filling up vacancies in the town council of said burgh. At said election it was found that votes had been given for the defender and votes for the pursuer, showing an apparent majority in favour of the defender of votes.

3. [*Set out objections to votes given for defender.*]

4. The result of giving effect to these objections would be to reduce the number of votes given to the defender to , showing a majority of votes in favour of the pursuer.

Pleas in Law.

1. The apparent majority in favour of the defender at said election being due to the allowance of the illegal votes now challenged, his alleged election ought to be set aside.

2. The pursuer having received a majority of the legal votes given at said election, ought to be declared duly elected a member of the council of the said burgh.

5. Minute for Special Case.

Note.—*Under sec.* 36 (7) *of the Corrupt Practices Act,* 1890, *any party to a petition may apply to the Court to direct a special case to be stated and laid before the Court of Session. The application must be made by way of minute* (*A. S., sec.* 6).

A. B., for the respondent C. D. [*designation*], stated that the petition raised questions of general importance, the decision of which would apply to numerous elections throughout the country, and that they could conveniently be stated as a special case; and he therefore craved the Court to state a special case for the decision of the Court of Session.

6. Minute of Withdrawal of Election Petition (under the Elections (Scotland) (Corrupt and Illegal Practices) Act, 1890).

Note.—*The petitioner in an election petition cannot withdraw the petition without the leave of the Court. If he desires to withdraw, he must first intimate his intention to apply for the authority of the Court by written notice to the respondent, His Majesty's Advocate, and the returning officer. Thereafter he lodges a minute in the form given hereunder.*

When such a minute is lodged, the Sheriff fixes a diet, which must not be earlier than eight days after his interlocutor for hearing the cause, and the petitioner must, at least six days before the hearing, publish in a newspaper circulating in the locality and named in the Sheriff's interlocutor, a notice in the form given hereunder. (*See A. S., 8th November* 1890, *sec.* 10.)

In the Petition questioning the election for the burgh of in which is Petitioner and is Respondent.

The petitioner desires to withdraw his petition on the following grounds [*state grounds*], and humbly craves that a diet may be appointed for hearing his application. He has, in compliance with the General Rules made by the Court of Session, given written notice of his intention to present this application to the respondent, to His Majesty's Advocate, and to the returning officer.

[*To be signed by the petitioner or his agent.*]

7. For New Election, where Former Election Void.

Sheriffdom of at .

A., B., and C. [*designations*], *Pursuers.*

The demand of the pursuers is—

For a decree authorising the election of a town council for the burgh of X.

Therefore the pursuers crave the Court—

To proceed with the election of a town council for the burgh of X. in the manner provided by secs. 25 and 26 of the Burgh Police (Scotland) Act, 1892, and the Town Councils (Scotland) Act, 1900: To appoint a date for lodging and withdrawing nomination papers: To fix the date of election and the polling places in the event of there being a poll: To direct the town clerk to give the notices prescribed in secs. 42 and 46 of the Town Councils (Scotland) Act, 1900, at such time as to the Court shall seem proper; in the event of a poll being necessary, to take the same under and in conformity with the provisions of the Ballot Act, 1872, the Elections (Hours of Poll) Act, 1884, and any Acts extending and amending the same.

CONDESCENDENCE.

1. [*Set out qualification of petitioners.*]
2. [*Narrate appointment of council.*]
3. [*Narrate illegality and consequent necessity for application under sec.* 66.]

PLEA IN LAW.

The said burgh of X. not having at present a legal council, an election should now be held under the provisions of sec. 66 of the Town Councils (Scotland) Act, 1900.

8. For Appointment of Provost or Bailie.

Sheriffdom of at .

A., B., C., and D., four of the electors of the burgh of , *Pursuers*,

against

E., F., etc., the individual members of the town council of the said burgh, as such members, and as individuals, *Defenders*.

The demand of the pursuers is—

For the appointment of a suitable person to fill the vacant office of provost [*or* bailie] of the said burgh.

Therefore the pursuers crave the Court—

To appoint such person, being a councillor of the said burgh, as to the Court may seem proper, to fill the vacant office of provost [*or* bailie] of the said burgh; and further, in the event of none of the councillors of the said burgh being willing to accept the said office, to appoint such person, being an elector of the said burgh, as to the Court may seem proper to fill the said office.

CONDESCENDENCE.

1. [*Narrate retiral of last holder, and consequent vacancy.*]

2. [*Narrate failure of council to meet in terms of sec.* 59, *or failure to make election within the month of November.*]

PLEA IN LAW.

The town council of the said burgh having failed to hold the statutory meeting in terms of sec. 59 of the Town Councils (Scotland) Act, 1900 [*or* having failed to elect a person to fill the vacant office of provost of the burgh], such appointment now falls to be made by the Court.

9. Petition under Sec. 113 of the Town Councils Act of 1900.

NOTE.—*By the said section, in cases of doubt as to either the meaning or application of the Act, or when there arises a case unprovided for, the council, seven electors or householders, the returning officer, or the town clerk, may apply to the Court of Session or the Sheriff Court for directions in the manner indicated in sec.* 17 *of the Burgh Police Act*, 1892.

Sheriffdom of at .

A. B. [*designation*], town clerk of the burgh of X., *Pursuer*.

The demand of the pursuer is—

For direction by the Court in the circumstances after set forth.

Therefore the pursuer craves the Court—

To pronounce an order giving directions to the pursuer as to the steps which he ought to take in the circumstances set forth in the Condescendence following, and in particular—(1) whether the said E. F. is entitled to sit as a member of council for the or ward; (2) whether there is a vacancy in either or both of said wards, and how such vacancy ought to be filled up: To order the expenses of this petition and the proceedings following thereon to be charged against the assessment levied in X. under the Registration Acts, or against the common good.

CONDESCENDENCE.

1. The burgh of X. is divided into three wards, each of which is represented by three town councillors. The nine councillors thus elected constitute the town council of the burgh.

2. The election of the town council of X. is regulated by the Town Councils (Scotland) Act, 1900 (63 & 64 Vict. c. 49), and by the Ballot Act, 1872.

3. Sec. 12 of the said Town Councils Act enacts as follows:—"Any male elector in the burgh who is not subject to any of the disqualifications after mentioned shall be eligible as a councillor." These disqualifications are set forth in sec. 13 of the said Town Councils Act, which is as follows:—[*Quote section.*]

4. Sec. 14 of the said Town Councils Act is as follows:—[*Quote section.*]

5. Sec. 36 of the said Town Councils Act is as follows:—[*Quote section.*]

6. Sec. 38 of the said Town Councils Act is as follows:—[*Quote section.*]

7. The annual statutory election of one-third of the council took place on . Nominations for the vacant offices were received on . Among these were nominations of C. D. [*designation*] and E. F. [*designation*] as candidates for the third ward.

8. The said E. F. was on elected a member of council for the second ward, and has not resigned office as a member of the town council as representing that ward.

9. Sec. 47 of the said Town Councils Act is as follows:—[*Quote section.*]

10. E. F.'s nomination paper complied with the conditions contained in this section, and accordingly the pursuer accepted the nomination.

11. At the election for the said third ward on , E. F. was found by the returning officer to have received votes and

C. D. votes, and the returning officer on declared E. F. to have been elected for the third ward.

12. The pursuer having on sent to E. F. the statutory notice of his election, and required his attendance on the following day to declare whether he accepted the office to which he had been elected, E. F. appeared at the time and place mentioned in the said notice, and intimated his acceptance of the office of councillor for the third ward, and took the requisite declaration, but has made no intimation as to his position relative to the second ward.

13. A certified copy of the minutes of all the proceedings relative to the present election is submitted herewith.

14. In these circumstances a number of questions of difficulty and dubiety have arisen, and a case has arisen in connection with the election of councillors not expressly provided for by the said Town Councils Act, namely, whether the vacant seat in the ward has been validly filled up; whether E. F. by his acceptance of office for the ward has *ipso facto* resigned his office for the ward; whether there are vacancies in either or both wards, and how such vacancies are to be filled up.

15. Sec. 113 of the said Town Councils Act is as follows:—[*Quote section.*] Questions of difficulty and dubiety having thus arisen, the present application to your Lordship under this section has become necessary.

PLEA IN LAW.

A case unprovided for by the Town Councils Act, 1900, having arisen in connection with the election of councillors, as condescended on, the pursuer is entitled to apply to the Court for directions thereanent.

Employer and Employed.—*See* IMPLEMENT; REPARATION, No. 10.

Employer's Liability Act, 1880.—*See* REPARATION.

Encroachment, Interdict against.—*See* INTERDICT, No. 19.

Entail Acts, under.

NOTE.—*Applications by heirs of entail for authority to exercise statutory powers are competetent in the Sheriff Court in the following cases*

viz.:—(1) *to feu,* (2) *to lease,* (3) *to excamb, and* (4) *to charge with improvement expenditure.*

(1) To Feu.—*These may be under the Acts of* 1840, 1868, *and* 1882. *Petitions under the Act of* 1840 *are only competent for a church, burying-ground, &c. The Act of* 1882 *applies only to feus for scientific purposes or other purposes of public utility. The leading Act and that under which practically all applications fall to be made is that of* 1868. *Under that Act the Sheriff may sanction the feuing for building purposes of any part of an entailed estate except the mansion-house, the gardens, policies, and such surroundings of the mansion-house as are necessary to its amenity. The feu-rights must also reserve to the heirs of entail the minerals, with right to work the same. The rate of feu-duty is fixed by the Sheriff. It must be the whole consideration received for the feu-right, the taking of any grassum, fine, or other valuable consideration being prohibited under pain of nullity of the charter. The authority may be to the petitioner and the succeeding heirs, and may empower them to grant feus at any time within ten years of the date of the deliverance. The Sheriff's decision may be appealed against within six months of its date.*

(2) To Lease.—*The enactments of the* 1868 *Act relating to feus apply also to building leases for a period not exceeding* 99 *years; and sec.* 5 *of the* 1882 *Act makes all applications for authority to lease competent in the Sheriff Court.*

(3) To Excamb.—*Power to excamb was conferred upon heirs of entail by the Montgomery Act, which enabled them to excamb portions of the entailed estate not exceeding* 30 *Scots acres of arable land or* 100 *Scots acres hill ground or other ground incapable of tillage. The procedure was* (1) *an application to the Sheriff for authority to excamb;* (2) *execution of a contract of exambion; and* (3) *the recording of the contract in the Sheriff Court books within three months. The* 1868 *Act extended the limits laid down by the Montgomery Act to "not more than* 300 *acres lying together in one place or plot."*

(4) To Charge Improvement Expenditure.—*The cost of Montgomery Act improvements might be constituted in the Sheriff Court, but that this course is practically never resorted to.*

Applications under the 1875 *and* 1878 *Acts for powers to borrow and charge for improvement expenditure, already executed or only contemplated, are competent in the Sheriff Court.*

(5) Procedure.—*Except in the case of power to excamb (which is regulated by sec.* 33 *of the Montgomery Act), the procedure in all Sheriff Court applications under the Entail Acts is regulated by the* 1868 *Act.*

1. For Authority to Excamb.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*
against
C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For authority to excamb the lands after mentioned.

Therefore the pursuer craves the Court—

To appoint two or more persons of skill to inspect and adjust the value of the lands proposed to be excambed, specified in the Condescendence annexed hereto, and to settle the marches thereof, and to report upon oath the extent of said lands; and whether the proposed exchange will be just and equal; and in the event of their so reporting, to interpone authority to the proposed transaction: To grant warrant to and authorise the pursuer to excamb the said lands, and to execute a contract or other deed of excambion: To find and declare that the said contract or other deed, on being recorded in the books of Court within three months after the date of the execution thereof, shall be effectual to all intents and purposes, and that the land given to the pursuer in exchange for the land excambed by him shall be held to be a part of the entailed estate of X., and shall be subject to all the prohibitory, irritant, and resolutive clauses of the entail of said estate in the same manner as if it had been originally a part of the said estate, and that the land given by the pursuer under the said contract of excambion shall after the date thereof be held as out of the said entail, and be liberated from all the prohibitory, irritant, and resolutive clauses thereof.

CONDESCENDENCE.

1. The pursuer is heir of entail in possession of the entailed lands and estate of X., under a disposition and deed of entail by in favour of [*set out designation*], dated , and recorded . The pursuer is infeft therein, conform to [*set out title*]. The defender is the pursuer's eldest son, and is the heir next entitled to succeed to the said entailed lands and estate. Pursuer and defender are both of full age and not subject to any incapacity.

2. By the Act 10 Geo. III. c. 51, commonly known as "The Montgomery Act," it is provided (secs. 32 and 33) [*quote sections*].

3. By the Act 31 & 32 Vict. c. 84, entituled "The Entail Amendment (Scotland) Act, 1868," it is enacted (sec. 14) [*quote section*].

4. The pursuer has agreed with L. M. of P. to exchange a small portion of the estate of X. for a small portion of the estate of P. The portion of the said estate of X. which the pursuer proposes to give in exchange consists of [*give description*], and the portion of the estate of P. which the pursuer is to receive in exchange consists of [*give description*]. These two pieces of land are equivalent or as nearly as may be equivalent in value, and their excambion will prove advantageous to the said entailed lands and estate and the heirs of entail succeeding thereto. [*If there are any particular reasons why the excambion will be advantageous, state them.*]

PLEA IN LAW.

The proposed excambion being fair and reasonable and of advantage to the entailed estate, the pursuer is entitled to warrant in terms of the prayer of the petition.

2. For Authority to Feu.

Sheriffdom of at .

Under the Entail Amendment (Scotland) Act, 1868.

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For authority to feu the lands after specified in terms of the Entail Acts.

Therefore the pursuer craves the Court—

To appoint a proper person to be *tutor* or *curator ad litem* to the said C. B.: To appoint one or more skilful persons to inquire and report—(1) As to the value of the portions of the lands of X. which the pursuer proposes to feu and which are specified in the Condescendence hereto; (2) whether from their position or otherwise they may be or ought to be feued in terms of the Entail Amendment (Scotland) Act, 1868, sec. 3, either in whole or in lots; (3) what feu-duty would, in his or their opinion and having regard to all the circumstances, be fair and adequate; (4) whether the garden, orchards, policies, or enclosures adjacent to or in connection with the manor place are included in the portions of the estate of X. proposed to be feued as aforesaid,

and if so (5) whether in his or their opinion such garden, orchards, policies, or enclosures are necessary to the amenity of the manor place; and on such report being lodged, to authorise the pursuer or his successors in the said entailed estate, at any time within ten years from the date hereof, to feu such portions in one or more lots, at such rate of feu-duty as he can obtain for the same, not being less than the rate fixed by the said skilled persons, subject to such conditions as the Court may think essential to secure such feu-duty and any other condition which it may see fit, and with power to the pursuer to grant the necessary feu-charters, feu-contracts, or feu-dispositions; under reservation always as regards the whole of the said portions of the lands of X. which may be authorised to be feued, of the minerals therein and the right of working the same: Provided always that every such feu-charter, feu-contract, or feu-disposition shall, under pain of nullity, contain a condition in terms of the 5th section of the Entail Amendment (Scotland) Act, 1868; and provided further that no grassum, fine, or valuable consideration other than the feu-duty shall, under pain of nullity, be taken for granting such feu-charter, feu-contract, or feu-disposition; and with right to the pursuer and his successors in said entailed estate, in granting feus, to impose such further conditions on the feuars relative to the character or nature of the buildings to be erected by them, and to the formation, maintenance, and use of streets, sewers, the prevention of nuisances, and such other matters as may be agreed on between him and them and the said feuars: Provided always that no such condition shall be valid which reduces the annual value of the feu-duty in any case below the minimum rate fixed as aforesaid: To find and declare that the said feu-charters, feu-contracts, or feu-dispositions, on being executed and recorded in the Register of Sasines, shall be effectual to all intents and purposes; and that from the date of such recording and so long as such feu-charters, feu-contracts, or feu-dispositions remain in force, the portions of lands so feued shall be held as out of the entail and be liberated from all the prohibitory, irritant, and resolutive clauses or clause of registration thereof, the superiority of the lands so feued and the feu-duties thereof remaining subject to the said entail in the same manner as the lands themselves were subject thereto previous to the granting of such feu-charters, feu-contracts, or feu-dispositions; and to find any party offering opposition hereto liable in expenses.

CONDESCENDENCE.

1. The pursuer is heir of entail in possession of the estate of X., in the county of Y., under and in virtue of a disposition and deed of entail made and executed by L. M. in favour of [*state destination shortly*], dated , and recorded in the Register of Entails , and in the Books of Council and Session . The pursuer is infeft in the said lands and estates, conform to [*state writs upon which the pursuer's infeftment stands*].

2. The defender is the eldest son of the pursuer, and is the next heir of entail entitled to succeed to the said entailed estate. The defender is in pupilarity, and has no legal guardian other than the pursuer.

3. By the Entail Amendment (Scotland) Act, 1868, sec. 3, it is provided [*quote the section at length*].

4. By sec. 4 of the said Act it is provided that for ascertaining whether the lands proposed to be feued should be feued and their value, an application shall be made by the heir in possession to the Sheriff of the county where the lands are situated, who is empowered—after directing notice to be given to the next heir, to whom, if incapax, the Sheriff shall appoint a *curator ad litem*, and after remitting to persons of skill to report as to the position and value of the lands, and the expediency of feuing them, and the adequacy of the feu-duty offered—to authorise the heir in possession, at any time within ten years, to feu the lands at not less than the rate of feu-duty fixed by the persons of skill, and under such conditions as the Sheriff shall think fit, and to grant the necessary feu-charter; and the lands so feued shall be liberated from all the prohibitory, irritant, and resolutive clauses, but the superiority of the said lands and the feu-duties thereof shall remain subject to the entail.

5. By sec. 5 of the said Act it is provided [*quote the section at length*].

6. The pursuer proposes to feu the following portions of the said entailed estate, *videlicet* [*describe them particularly*]. The said portions proposed to be feued do not include any part of the garden, orchards, policies, or enclosures adjacent to or in connection with the manor place.

7. The population of the district in which the said portions of the estate of X. are situated is increasing, and the land in that neighbourhood is valuable for building purposes. The said portions are at present vacant, and it will be greatly to the advantage of the said estate if suitable feus of the said portions are granted. The present application is accordingly made, under and in terms of the Entail Amendment

(Scotland) Act, 1868, for the purpose of obtaining the requisite sanction of the Court.

PLEA IN LAW.

The pursuer, as heir of entail in possession of said estate, being desirous to feu part thereof in virtue of the statutory powers in that behalf, he is entitled to be authorised to grant such feu on satisfying the Court of the legality and propriety thereof.

3. To Feu Portion of Estate for Church.

Sheriffdom of at .

Under the Entail Sites Act, 1840.

A. B. [*designation*], *Pursuer*,
against
C. B. [*designation*], *Defender*.

The demand of the pursuer is—

For authority to feu a piece of ground, part of the entailed estate of X., for the purpose of erecting a church thereon in terms of the Entail Sites Act, 1840.

Therefore the pursuer craves the Court—

To approve of a proposed feu to L. and M. [*the parties in whom the ground is to be vested in trust*] of a piece of ground [*describe it particularly*], and extending to 2 acres or thereby, part of the entailed estate of X., on payment of a yearly feu-duty of £ , under provision that no grassum, fine, or consideration other than the feu-duty shall be taken for granting such feu, for the purpose of erecting a place of worship with burying-ground attached thereto: To interpone authority to the granting of said feu as craved, or under such limitations or qualifications as the Court may judge necessary or proper, all in terms of the Entail Sites Act, 1840; and to find any party offering opposition hereto liable in expenses.

CONDESCENDENCE.

1. The pursuer is the heir of entail in possession of the estate of X., in the county of Y., under and in virtue of a disposition and deed of entail made and executed by in favour of [*state destination shortly*], dated , and recorded in [*registers*]. The pursuer is infeft therein, conform to [*state title*].

2. The defender is the eldest son of the pursuer, and is the next heir of entail entitled to succeed to the said entailed estate. The defende

is of full age and is not subject to any legal incapacity. He was born .

3. By the Entail Sites Act, 1840, sec. 1, it is provided [*quote the section at length*].

4. By sec. 3 of the said Act it is provided that, previous to the granting of such a feu, the heir in possession shall present a petition to the Sheriff of the county where the lands are situated, who, after ordering certain intimation and advertisement as specified in the said section, and after such inquiry as he shall think necessary, may, if satisfied of the propriety of the measure, and that it is not injurious to the interest of succeeding heirs, interpone authority thereto as craved, or under such limitation or qualification as he may judge necessary or proper.

5. The piece of ground described in the petition forms part of the entailed estate of X. The pursuer proposes to feu it to the said L. and M. for the purpose of erecting a place of worship on $\frac{1}{4}$ acre thereof, and of constructing a burying-ground to be attached thereto on the remaining $1\frac{3}{4}$ acre. The feu-duty offered therefor, which the pursuer is willing to accept, is £ . The said L. and M. are the trustees [*or* director or manager] of the congregation of , for whose use the said place of worship and burying-ground are to be erected.

6. In the circumstances, it would be proper and not injurious to the interest of the succeeding heirs of entail, that the said feu should be granted, and the present application is accordingly made under and in terms of the Entail Sites Act, 1840, for the purpose of obtaining the requisite sanction of the Court.

PLEA IN LAW.

The pursuer, as heir of entail in possession of the said estate, being desirous to feu a portion thereof of the size and for the purpose specified, and such feu being in the circumstances proper and not injurious to the interest of the succeeding heirs of entail, the pursuer is entitled to authority to grant the same, as craved.

4. For Authority to Grant Lease.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], &c., *Defenders*.

The demand of the pursuer is—

For authority to grant a lease of the subjects mentioned in the annexed Condescendence in terms of the Entail Acts.

Therefore the pursuer craves the Court—

To appoint this application to be advertised once in the *Edinburgh Gazette* and once in the newspaper: To grant warrant to and authorise the pursuer to make and execute at the sight of the Court a lease to and in favour of , and the heirs of the said , of the subjects mentioned in the Condescendence hereto annexed, for the period of twenty-six years from and after the term of , and that at the rent and on the terms and conditions set forth in the minute of agreement produced herewith and mentioned in the Condescendence hereto annexed; or to do further or otherwise in the premises as to the Court may seem proper.

CONDESCENDENCE.

1. The pursuer is heir of entail in possession of the entailed lands and estate of X., in the county of Y., under and by virtue of a deed of entail made and executed by in favour of , dated , and recorded [*give particulars of recording*]. The pursuer has completed a title to the said entailed lands and estate, conform to [*set out petitioner's title*]. The pursuer is of full age, and not subject to any legal incapacity. The defenders are the three heirs of entail next entitled to succeed to the said lands and estate after the petitioner. They are all of full age, and not subject to any legal incapacity.

2. By the Act 11 & 12 Vict. c. 36, entituled "An Act for the Amendment of the Law of Entail in Scotland," it is enacted (sec. 4) [*quote section*].

3. By sec. 3 of the said Act it is provided [*quote section*].

4. By the Act 45 & 46 Vict. c. 53, entituled "The Entail (Scotland) Act, 1882," it is enacted (sec. 5) [*quote first paragraph of section*].

5. The pursuer has arranged with L. M. [*designation*] that he should take a lease of the old mansion-house of X., with relative offices, garden, policies, and shootings over the estate, all as mentioned in the provisional agreement produced herewith.

6. The pursuer has never resided in the old mansion-house of X. since his succession in , and has always let it along with the shootings. It will be of advantage to the estate that he should be authorised to enter into the proposed lease, as a tenant will thereby be secured for a long period, who proposes to execute, at his own expense, various works which will permanently improve the estate.

7. The pursuer will produce, in the course of the proceedings to follow hereon, a deed [*or* deeds] of consent by the same [*name of heir or heirs whose consent is necessary*].

8. The pursuer will also produce a schedule of debts and provisions, signed and deponed to by him, in terms of the Act 38 & 39 Vict. c. 61, sec. 12, subsec. (5).

PLEA IN LAW.

The proposed transaction being fair and reasonable, and of advantage to the entailed estate, warrant should be granted in terms of the prayer of the petition.

5. For Authority to Charge Improvement Expenditure already Executed.

Sheriffdom of at .

A. B. [*designation*], heir of entail in possession of the entailed lands and estate of X., in the county of Y., *Pursuer*,

against

C. B. [*designation of next heir*], *Defender*.

The demand of the pursuer is—

For authority to charge improvement expenditure, already executed, on the entailed lands and estate of X., in terms of the Entail Acts.

Therefore the pursuer craves the Court—

To appoint this application to be advertised once in the *Edinburgh Gazette* and once in the newspaper, and to be served upon the said C. B.; thereafter (*first*) to appoint a fit and proper person to be curator *ad litem* to the defender, the said C. B.; (*second*) to appoint one or more persons of skill to inquire into and report as to the improvements detailed in the statement or account produced and referred to in the annexed Condescendence, executed by the pursuer on the said entailed lands and estate of X.; on considering said report, to find and declare that the said improvements are of a substantial nature and beneficial to the said estate, and are of the nature contemplated by the Entail Amendment (Scotland) Act, 1875, and Acts amending the same, and that the sum of £ expended on said improvements, or such other sum as may be ascertained by the Court to have been expended thereon by the pursuer, was *bonâ fide* expended by him while heir of entail in possession of said lands and estate in the improvement thereof: To grant warrant to and authorise the pursuer to borrow the said sum of £ , or such other sum as may be ascertained by the Court to have been expended as aforesaid, together with such sum as the Court may find to be the actual or estimated costs of this application and

the proceedings thereon, and of obtaining the loan and granting security therefor: To grant warrant to and authorise the petitioner to execute in favour of himself and his assignees, or any party or parties he may think fit, a bond or bonds of annualrent in ordinary form over the said entailed lands and estate, other than the mansion-house, offices, and policies thereof, binding himself and the heirs of entail to make payment of an annualrent on the said sum of £ , or such other sum as may be ascertained to have been expended as aforesaid, and also on such sum as the Court may find to be the actual or estimated costs of this application and proceedings therein, and of obtaining the loan and granting security therefor, and that during the period of twenty-five years from and after the date of such authority being granted, by equal moieties half-yearly, at the terms of Whitsunday and Martinmas, at a rate not exceeding £7, 2s. per annum for every £100 so authorised to be borrowed, and so in proportion for any greater or less sum; or, in the option of the pursuer and in lieu of such bond or bonds of annualrent, to grant warrant to and authorise him to charge the fee and lands of said entailed lands and estate, or any part thereof, other than the mansion-house, offices, and policies thereof, with three-fourth parts of the sum ascertained as aforesaid, on which the amount of said bond or bonds of annualrent, if granted, would be calculated in terms of said Act, by granting in favour of himself and his assignees, or any party or parties whom he may think fit, a bond and disposition in security or bonds and dispositions in security over the said entailed lands and estate, other than as aforesaid, for such amount, with interest at the rate to be specified in the said bond or bonds, with corresponding penalties and expenses, and containing a power of sale and all other clauses usual in bonds and dispositions in security over lands in Scotland held in fee-simple; and to pronounce such other order or orders, or to do otherwise in the premises, as to the Court shall seem proper; and to find the defender liable in expenses in the event of his offering opposition hereto.

CONDESCENDENCE.

1. The pursuer is heir of entail in possession of the entailed lands and estate of X., in the county of Y., under and by virtue of a deed of entail made and executed by in favour of , dated , and recorded [*give particulars of recording*].

2. The pursuer is infeft in said lands and estate, conform to [*set out pursuer's title, e.g.* extract decree of special service in favour of the pursuer as heir of tailzie and provision to his father, the now deceased , dated , and recorded in Chancery and extracted , and recorded in the Division of the General Register of Sasines applicable to the county of Y. the day of , all in the year].

3. The pursuer, who was born on , is of full age and not subject to any legal incapacity.

4. The defender is the eldest son of the pursuer, and resides with him at aforesaid. The defender is in minority, and has no other guardian than the pursuer. It will therefore be necessary that a curator *ad litem* should be appointed to him in the course of the proceedings to follow hereon.

5. By the Act 38 & 39 Vict. c. 61, entituled "The Entail Amendment (Scotland) Act, 1875," it is enacted, *inter alia*, that the word "improvements" shall include all or any of the matters therein set forth, and all operations necessary for carrying into effect any of such matters, and particularly [*quote part of definition which comprises improvements executed by the pursuer*].

6. By sec. 7 of the said Act it is enacted [*quote section*].

7. By sec. 8 of the said Act it is enacted [*quote section*].

8. By the Act 45 & 46 Vict. c. 53, entituled "The Entail (Scotland) Act, 1882," it is enacted (sec. 6, subsec. 1) [*quote subsection*].

9. By sec. 5 of the said last-mentioned Act it is enacted [*quote first paragraph of section*].

10. [*In the case of an entail dated on or after* 1*st August* 1848, *add*— By sec. 4 of the said last-mentioned Act it is enacted [*quote section*].]

11. The pursuer has since laid out and expended various sums in improvements upon the said entailed lands and estate of the nature contemplated by the said Act 38 & 39 Vict. c. 61. The said improvements consist of [*set out shortly the nature of the improvements executed by the pursuer*]. The sum so expended amounts to £ or thereby, conform to detailed statement produced herewith.

12. The pursuer will produce, in the course of the proceedings to follow hereon, a schedule, signed and deponed to by him as correct to the best of his knowledge and belief, setting forth the debts and provisions to husbands, widows, and children, affecting or that may be made to affect the fee of the said entailed lands and estate, or the heirs of entail that are not secured by having been placed upon the record.

13. In these circumstances the pursuer desires to avail himself of the before-recited Acts, with reference to borrowing money to defray

the cost of improvements, and he accordingly makes the present application to the Court for authority to charge the said estate by bond of annualrent with the whole of said expenditure, including the actual or estimated costs of this application, and of obtaining the loan and granting security therefor, or in his option by bond and disposition in security for three-fourth parts of the sum on which the amount of said annualrent would be calculated.

PLEA IN LAW.

The improvements executed by the pursuer upon the said entailed estate being of a substantial nature and beneficial thereto, warrant should be granted in terms of the prayer of the petition.

6. For Authority to Charge Entailed Estate with Cost of Improvements to be Executed.

Sheriffdom of at .

A. B. [*designation*], heir of entail in possession of the entailed lands and estate of X., in the county of Y., *Pursuer*,

against

C. D. [*name and designation of the next heir*], *Defender*.

The demand of the pursuer is—

For authority to charge the entailed lands and estate of X. with the cost of improvements to be executed thereon, in terms of the Entail Acts.

Therefore the pursuer craves the Court—

To appoint this application to be advertised once in the *Edinburgh Gazette* and once in the newspaper, or in such other newspaper or newspapers as the Court may think fit: To appoint one or more persons of skill to inquire into and report as to the improvements, mentioned in the Condescendence hereto annexed, contemplated to be executed by the pursuer upon the said entailed lands and estate of X.; on considering said report to find and declare that the said improvements, if well executed, will be of a substantial nature and beneficial to the estate: To determine the amount to be borrowed by the pursuer to defray the cost of the said improvements: To grant warrant to and authorise the pursuer to borrow on the security of the said entailed lands and estate the sum of £ , or such other sum as may be determined by the Court to be the sum to be borrowed by the pursuer to defray the cost of the said improvements contem-

plated by the pursuer, together with such sum as the Court may find to be the actual or estimated costs of this application and proceedings therein, and of obtaining the loan and granting security therefor; as also to make an order for the consignation in bank of the said sum of £ , or such other sum as the Court may determine as aforesaid, on a receipt payable to the orders of the Court; and thereafter to make such orders and to give such directions as the Court may think necessary from time to time for the inspection of the works and improvements in the course of execution: To grant orders from time to time for payment out of the consigned money to the pursuer, or, in the case of his death, to his personal representative or other successor entitled thereto and sisted herein, of the costs of the improvements, so far as executed to the satisfaction of the Court, paid for by the pursuer, or for which he is liable, and of the expenses of the process and of the loan and security: To grant warrant to and authorise the pursuer to execute in favour of himself and his executors and assignees, or any party or parties he may think fit, a bond or bonds of annualrent in ordinary form over the said entailed lands and estate, other than the mansion-house, offices, and policies thereof, binding himself and his heirs of entail to make payment of an annualrent on said sum of £ , or such other amount as may be determined as the sum to be borrowed to defray the cost of the said improvements, and also on such sum as the Court may find to be the actual or estimated costs of this application, and of obtaining the loan and granting security therefor, payable said annualrent during the period of twenty-five years from and after the expiration of two years from the date of consignation; such annualrent to be payable by equal moieties half-yearly, and to be at a rate not exceeding £7, 2s. per annum for every £100 authorised to be borrowed, and so in proportion for any greater or less sum; or otherwise, in the option of the pursuer, to grant warrant to and authorise the pursuer to charge the fee and rents of the said entailed lands and estate, other than as aforesaid, by granting in favour of himself and his executors or assignees, or any party or parties he may think fit, a bond and disposition in security or bonds and dispositions in security for three-fourth parts of the sum ascertained as aforesaid, on which the amount of said bond or bonds of annualrent, if granted, would be calculated over the said entailed lands and estate, other than as aforesaid, with interest at the rate to be specified in said bond or bonds, with

corresponding penalties and expenses, and containing a power of sale and all other clauses usual in bonds and dispositions in security over lands in Scotland held in fee-simple; and to pronounce such other order or orders, or to do otherwise in the premises, as to the Court shall seem proper; and to find the defender liable in expenses in the event of his offering opposition hereto.

CONDESCENDENCE.

1. The pursuer is heir of entail of the entailed lands and estate of X., in the county of Y., under and by virtue of a deed of entail executed by in favour of [*set out destination*], dated , and recorded [*give particulars of recording*].

2. The pursuer has completed a title to the said entailed lands and estate, conform to [*set out pursuer's title*].

3. The pursuer, who was born on , is of full age and not subject to any legal incapacity.

4. The defender is the eldest son of the pursuer, and resides with him at aforesaid. He is of full age, and not subject to any legal incapacity [*or otherwise as the case may be*].

5. By the Act 38 & 39 Vict. c. 61, entituled "The Entail Amendment (Scotland) Act, 1875," sec. 3, it is enacted, *inter alia*, that the word "improvements" shall include all or any of the matters therein set forth, and all operations necessary for carrying into effect any of such matters, and in particular [*quote particular clause under which the contemplated improvements fall*].

6. By sec. 7 of the said Act it is provided [*quote section*].

7. By sec. 8 of the said Act it is provided [*quote section*].

8. By the Act 45 & 46 Vict. c. 53, entituled "The Entail (Scotland) Act, 1882," it is enacted (sec. 5) [*quote section*].

9. By sec. 6, subsec. (1) of the said last-mentioned Act, it is enacted [*quote subsection*].

10. [*In the case of entails dated on or after* 1*st August* 1848, *add*— By sec. 4 of the said last-mentioned Act it is enacted [*quote section*].]

11. The pursuer has in contemplation improvements on the said entailed lands and estate of the nature contemplated by the said Entail Amendment (Scotland) Act, 1875. These improvements consist of [*state shortly the nature of the improvements contemplated by the pursuer*]. The cost of these improvements is estimated at the sum of £ or thereby.

12. The pursuer will produce, in the course of the proceedings to follow hereon, a schedule, signed and deponed to by him as correct to

the best of his knowledge and belief, setting forth the debts and provisions to husbands, widows, and children, affecting or that may be made to affect, the fee of the said entailed lands and estate, or the heirs of entail that are not secured by having been placed upon the record, all in terms of sec. 12, subsec. 5, of the Act 38 & 39 Vict. c. 61.

13. In these circumstances the pursuer desires to avail himself of the enactments above recited, with reference to borrowing money to defray the cost of the said improvements contemplated by him, including the costs of this application, and of obtaining the loan and granting security therefor, and to grant bond of annualrent for the same, or in his option to charge the fee and rents of the said lands and estate, other than the mansion-house, offices, and policies thereof, with three-fourth parts of the said estimated costs and expenses, by granting a bond and disposition in security over the said entailed lands and estate, other than as aforesaid, for three-fourth parts of the said amount.

PLEA IN LAW.

The improvements on the said entailed estate contemplated by the pursuer, if well executed, being of a substantial nature and beneficial to the estate, warrant should be granted in terms of the prayer of the petition.

7. Petition by Legatee of Deceased Heir to have Entailed Estate Charged with Improvement Expenditure.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator that improvements effected on the entailed lands of X. by the deceased E. B., sometime heir of entail in possession of said lands, in terms of the Entail Acts.

Therefore the pursuer craves the Court—

To appoint this application to be advertised once in the *Edinburgh Gazette*, and once in the newspaper, or in such other newspaper or newspapers as to the Court may seem fit: To remit to one or more persons of skill to report upon the improvements executed by the now deceased E. B. upon the entailed lands of X., and mentioned or referred to in the annexed Condescendence: To find and declare that the said improvements are of the nature contemplated by the Entail Acts, and that the sum of £

sterling, or such other sum as the Court may ascertain, was *bonâ fide* expended on said improvements by the said deceased E. B. while he was heir of entail in possession of the said entailed lands and estate: To find that the pursuer is in right thereof, and to decern and ordain the said C. D., as heir of entail in possession of the said entailed lands and estate, to execute in favour of the pursuer, or of any other person the pursuer may think fit, a bond and disposition in security over the said entailed lands and estate, other than the mansion-house, offices, and policies thereof, or over some sufficient portion of the said lands and estate, other than as aforesaid, for three-fourth parts of the said sum of £ , or such other sum as may be ascertained to have been *bonâ fide* expended by the said deceased E. B. as aforesaid, together with three-fourth parts of the actual or estimated amount of the expenses of this application and the proceedings therein and of obtaining the loan and granting security therefor, with interest at the rate to be stated in the said bond and disposition in security from the date of the decree in this application during the not-payment, and corresponding penalties in case of failure; such bond and disposition in security binding the said C. D., the present heir of entail, and the heirs of entail succeeding to him in the said entailed lands and estate in their order successively, to repay the principal sum therein, with interest and penalties as aforesaid, and containing a power of sale and all other clauses usual in bonds and dispositions in security over lands in Scotland held in fee-simple; and to pronounce such other order or orders, and to do further or otherwise in the premises, as to the Court shall seem proper.

Condescendence.

1. The pursuer is the only daughter and executor-nominate of the now deceased E. B., sometime heir of entail in possession of the entailed lands and estate of X., in the county of Y. The defender is the heir of entail now in possession of the said entailed lands and estate.

2. By the Entail Amendment (Scotland) Act, 1875, it is enacted (sec. 3) that the word "improvements" shall include all or any of the matters therein set forth, and all operations necessary for carrying into effect any of such matters, and *inter alia* [*quote part of definition particularly relied on*].

3. By sec. 7 of the said Act it is provided [*quote section down to words* so far as unpaid].

4. By sec. 8 of the said Act it is provided [*quote section*].

5. By sec. 11 of the said Act it is provided [*quote section*].

6. [*In the case of a new entail, add*—By the Entail Amendment (Scotland) Act, 1878, it is enacted (sec. 3) [*quote section*].]

7. By the Entail (Scotland) Act, 1882, it is enacted (sec. 5) [*quote first paragraph of section*].

8. By sec. 6, subsec. (1) of the said last-mentioned statute it is enacted [*quote subsection*].

9. The said deceased E. B., prior to his death and within the period of twenty years from the date hereof, viz. between and , laid out and expended various sums in improvements upon the said entailed lands and estate of the nature contemplated by the said Act 38 & 39 Vict. c. 61. The said improvements consist of [*set out shortly the nature of the improvements*]. The sum so expended by the said E. B. amounted to £ or thereby, conform to a detailed statement to be produced in the course of the proceedings to follow hereon. The said E. B. had not charged any part of said expenditure on the said entailed lands and estate prior to his death.

10. By the purpose of his trust-disposition and settlement, dated , and registered in the Books of Council and Session , the said E. B. [*quote express bequest of improvement expenditure in favour of the pursuer*].

11. The heir of entail next entitled to succeed to the said entailed lands and estate after the defender is F. D. [*designation*]. He is of full age, and not subject to any legal incapacity.

12. The pursuer is now desirous of having three-fourths of the said expenditure charged upon the said entailed lands and estate, and she accordingly makes the present application to the Court under the Entail Acts for that purpose.

PLEA IN LAW.

The pursuer's author having, while heir of entail in possession of said lands, expended the sum of £ in improvements thereon, and the pursuer being now in right of the said sum, decree should be granted in terms of the prayer of the petition.

8. Petition for Authority to Substitute a Bond and Disposition in Security for a Bond of Annualrent.

NOTE.—*The question whether this is competent in the Sheriff Court has never been decided.*

The power to effect such substitution was introduced by the Act of 1875.

The Act of 1882 *considerably modified the conditions under which such substitutions could be made. The Act merely* (*sec.* 6 (4)) *extended and did not supersede the provisions of the* 1875 *Act. Section* 5 *of the* 1882 *Act made any application under the* 1875 *Act "for authority to borrow and charge for improvement expenditure" competent in the Sheriff Court. The following form is given on the footing that the application may be found to fall within the words used.*

Sheriffdom of at .

A. B. [*designation*], heir of entail in possession of the entailed lands and estate of X., in the county of Y., *Pursuer*,

against

C. D. [*designation of next heir*], *Defender.*

The demand of the pursuer is—

For authority to substitute a bond and disposition in security for a bond of annualrent, by which the fee of the estate of X. is charged.

Therefore the pursuer craves the Court—

To appoint this application to be advertised once in the *Edinburgh Gazette*, and once in the newspaper, or in such other newspaper or newspapers as the Court may think fit: To find and declare that the fee of the said entailed lands of X. is validly charged with an annualrent of £ , contained in and secured by a bond of annualrent granted by in favour of , dated , and recorded , and that the said annualrent continues to affect the same: To sanction the agreement set forth in the Condescendence hereto annexed, and to grant warrant to and authorise the pursuer to grant in substitution for the said bond of annualrent, a bond and disposition in security, or bonds and dispositions in security, in ordinary form, over the said entailed lands and estate, other than the mansion-house, offices, and policies thereof, or such parts as may be selected by the pursuer, other than as aforesaid, in favour of the said [*name of creditor*], or of any other person or persons who may advance the same, for the sum of £ , or such other sum, more or less, as may be necessary to provide for payment of the portion remaining unpaid of the sum on which the amount of the said annualrent was calculated, or otherwise for so much of said sum as the pursuer is entitled to charge on the fee of the said entailed lands and estate, other than as aforesaid, with the interest of the said sum at the rate to be specified in the said bond and disposition in security, or bonds and dispositions in

security, from the date of advance until repaid, and corresponding penalties; such bond and disposition in security, or bonds and dispositions in security, binding the pursuer and his heirs of entail to make payment of the principal sum or sums therein contained, and containing all clauses usual in bonds and dispositions in security over lands in Scotland held in fee-simple; and to pronounce such other order or orders, or to do otherwise in the premises, as to the Court shall seem proper; and to find the defender liable in expenses in the event of his offering opposition hereto.

CONDESCENDENCE.

1. The pursuer is heir of entail in possession of the entailed lands and estate of X., in the county of Y., under and by virtue of a deed of entail made and executed by in favour of , dated , and recorded [*give particulars of recording*].

2. The pursuer is infeft in the said lands and estate, conform to [*set out pursuer's title*].

3. The pursuer, who was born on , is of full age, and not subject to any legal incapacity.

4. The defender is the heir of entail next entitled to succeed to the said entailed lands and estate after the pursuer. He is of full age, and not subject to any legal incapacity.

5. By the Act 38 & 39 Vict. c. 61, entituled "The Entail Amendment (Scotland) Act, 1875," sec. 9, on the narrative [*take it in*] it is enacted [*quote enactment*].

6. By the Act 45 & 46 Vict. c. 53, entituled "The Entail (Scotland) Act, 1882," it is enacted (sec. 6, subsec. 4) [*quote subsection*].

7. By sec. 5 of the last-recited Act it is enacted [*quote first paragraph*].

8. On or about the pursuer, in virtue of the said Entail Amendment (Scotland) Act, 1875, and as specially authorised by an interlocutor pronounced by on or about , granted a bond of annualrent in favour of [*name and designation of creditor*], dated , and recorded , whereby he bound himself, &c. [*as in bond*].

9. The pursuer has, prior to the presentation of the present application, defrayed more than one-fourth part of the capital sum due under the said bond of annualrent. The balance of the capital sum still remaining due amounts to £ or thereby.

10. The pursuer has arranged with the said , who is still in right of the said bond of annualrent, for the redemption thereof as at

, and he proposes, with the authority of the Court, to grant a bond and disposition in security, or bonds and dispositions in security, in ordinary form, over the said entailed lands and estate for the said sum of £ , being the balance of the capital sum secured by the said bond of annualrent, or such other sum as may be necessary to provide for payment of the portion thereof remaining unpaid.

PLEA IN LAW.

The pursuer having defrayed one-fourth part of the capital sum contained in the said bond of annualrent, warrant should be granted in terms of the prayer of the petition.

Enticing Servants, Damages for.—*See* REPARATION.

Entry on Lands and Premises, Petitions for.—*See* ACCESS; LANDS CLAUSES ACT; PUBLIC HEALTH ACT.

Erection of Churches, &c.—*See* CHURCH.

Error, Repayment on Ground of.

NOTE.—*To found an action of reduction on the ground of error,* i.e. *as to* (a) *subject matter,* (b) *parties contracting,* (c) *consideration,* (d) *quality of subject matter, or* (e) *nature of contract, the error must be in the essentials of the contract. The error must have been induced either fraudulently or innocently by the other party; or, in the case of a unilateral deed, the party must have been excusably ignorant of what he was doing. The error may be in fact or in law. Such actions are competent only in the Court of Session.*

To found an action for repetition of money paid in error, the error must (unless perhaps in very special circumstances) have been in fact, not in law.

For Repayment of Money Paid in Error.

Sheriffdom of at .

A. B. [*designation*], *Pursuer,*

against

C. D. & Co. [*designation*], *Defenders.*

The claim of the pursuer is—

For payment by the defender of £50, with interest and expenses.

Therefore the pursuer craves the Court—

To grant a decree against defenders for payment to the pursuer of fifty pounds, with interest from the first day of June nineteen hundred and till payment, with expenses.

CONDESCENDENCE.

1. In the beginning of the year 19 , the pursuer, who is a retired merchant, employed the defenders to erect for him a villa at . The house was to be similar in every respect as to plan, size, style, and finish, to the house then just erected by the defenders on the adjoining site to the north. The agreed-on price for the villa, with offices, boundary walls, railings, pavement, &c., was £1250.

2. The defenders duly erected said villa, and from time to time they received payments to account, amounting, as at 12th April 19 , when the pursuer obtained occupation of the house, to the sum of £1200. Several of these payments were made by the pursuer's agents during his absence from home.

3. On or about 14th May, Mr. C. D., the senior partner of the defenders' firm, called on the pursuer and urgently pressed the pursuer for payment of the balance due to him for the erection of said villa, which he alleged to be £100. The pursuer at first declined, but on Mr. C. D. stating that the payment was absolutely necessary to enable the defenders to meet their term obligations, and in the belief induced by the defenders' statements that the sum of £100 was still due on the contract price of said house, he handed him a cheque for £100. The said cheque was cashed by the defenders on the same day.

4. About a week afterwards, the pursuer, in going over his accounts, discovered that the balance due to the defenders on 14th May was only £50, and that he had thus overpaid them to the extent of £50. He at once wrote them, pointing out the error and asking repayment, to which they, on the 23rd May 19 , replied, stating that the £50 was a fee for their trouble in preparing plans for the house.

5. The defenders did not, the pursuer avers, prepare any plans for the said villa; the plans used being those which had already done duty for the erection of at least half a dozen identically similar houses adjoining, and which were exhibited to the pursuer at the time the contract was entered into as those upon which his house would be erected. Further, at no time prior to their said letter of 23rd May was any claim ever made or account rendered by the defenders for the preparation of such plans.

PLEAS IN LAW.

1. The sum sued for having been paid by the pursuer to the defenders under essential error induced by the defenders, decree for repetition thereof should be granted, as craved.

2. The sum sued for having been paid by the pursuer to the defenders under error as to fact, the pursuer is entitled to repayment thereof, as craved.

Estate Duty Assessment.—*See* APPEALS.

Estate Duty, Petition to Charge.—*See* ENTAIL.

Eviction.—*See* CROFTERS' HOLDINGS ACT; EJECTION; LEASE; REMOVING.

Evidence.—*See* MOTION.

Examination.—*See* BANKRUPTCY, Nos. 15 and 16; MOTION.

Excamb, Petition for Authority to.—*See* ENTAIL PETITIONS; TRUST PETITIONS.

Executor.

A. For Appointment as Executor-Dative.

1. For Appointment of Executor qua Next-of-Kin.

Sheriffdom of at .

A. B. [*design him or her, and if a married woman, add,* with consent and concurrence of her said husband], *Pursuer.*

The demand of the pursuer is—

For his [*or* her] appointment as executor-dative *qua* next-of-kin to the deceased C. B. [*designation*].

Therefore the pursuer craves the Court—

To decern him [*or* her] executor-dative, *qua* next-of-kin to the said deceased C. B.

CONDESCENDENCE.

1. The said C. B. died at on 19 , and had at the time his ordinary or principal domicile in the county of

[*or* without any known or fixed domicile, except that the same was in Scotland].

2. The pursuer is a son [*or* daughter] and one of the next-of-kin of the said C. B.

[*or* The pursuer is a son [*or* daughter] of the late E. B. [*designation*], who was a son of the said C. B., and who predeceased him, and was survived by no other son or daughter. The pursuer is thus a grandson [*or* grand-daughter] and one of the next-of-kin of the said C. B.]

[*or* The pursuer is a brother-german of the said C. B., who died without issue, and is thus one of his next-of-kin.]

[*or* The pursuer is a nephew [*or* niece] of the said C. B., being a son [*or* daughter] of the late G. B. [*designation*], brother [*or* sister] german of the said C. B., who died without issue, and who was not survived by any brothers and sisters german. The pursuer is thus one of the next-of-kin of the said C. B.]

[*or* The pursuer is a brother [*or* sister] consanguinean of the said C. B., who died without issue, and who was not survived by any brothers or sisters german, or their descendants, and who is thus one of his next-of-kin.]

[*or* The pursuer is a nephew [*or* niece] of the half blood of the said C. B., being a son [*or* daughter] of H. B., who was a brother or sister consanguinean of the said C. B. The said C. B. died without issue, and without leaving any brothers or sisters german, or their descendants, and without being survived by any brother or sister consanguinean. The pursuer is thus one of the next-of-kin of the said C. B.]

[*or* The pursuer is the father of the said C. B., who died without issue, and without leaving any brothers or sisters german or consanguinean, or their descendants. The pursuer is thus one of the next-of-kin of the said C. B.]

[*or* The pursuer is the paternal uncle [*or* aunt] of the said C. B., being a brother [*or* sister] of H. B., who was the father of the said C. B. The said C. B. died without leaving issue or any brothers or sisters german or consanguinean, or their descendants, and predeceased by his father. The pursuer is thus one of the next-of-kin of the said C. B.]

[*or* The pursuer is a cousin-german of the said C. B., being a son [*or* daughter] of J. B., who was a brother [*or* sister] of H. B., the father of the said C. B. The said C. B. died without issue, and without leaving any brothers or sisters german or consanguinean, or their descendants, and without being survived by his father or any paternal uncles or aunts. The pursuer is thus one of the next-of-kin of the said C. B.]

[*or* The pursuer is the uncle [*or* aunt] by the half blood of the said C. B., being the brother [*or* sister] consanguinean of H. B., who was the father of the said C. B. The said C. B. died without leaving issue or any brothers or sisters german or consanguinean, or their descendants, and predeceased by his father, who left no brothers or sisters german, or their descendants [*or* none who survived the said C. B.]. The pursuer is thus one of the next-of-kin of the said C. B.]

[*or* The pursuer is a cousin by the half blood of the said C. B., being a son [*or* daughter] of M. B., who was a brother [*or* sister] consanguinean of H. B., who was the father of the said C. B. The said C. B. died without leaving issue or any brothers or sisters german or consanguinean, or their descendants, and his father predeceased him without leaving any brothers or sisters german, or their descendants, or any brothers or sisters consanguinean [*or* none who survived the said C. B.]. The pursuer is thus one of the next-of-kin of the said C. B.]

[*or* The pursuer is the paternal grandfather of the said C. B., who died without issue, and without leaving any brothers or sisters german or consanguinean, or their descendants, and predeceased by his father, H. B., who left no brothers or sisters german or consanguinean, or their descendants [*or* none who survived the said C. B.]. The pursuer is thus one of the next-of-kin of the said C. B.]

PLEA IN LAW.

The pursuer being one of the next-of-kin of the said C. B., is entitled to be decerned his executor-dative.

2. For Appointment of Executor-Dative qua Representative of Next-of-Kin.

[*Same as Form No.* 1, *inserting "representative of the next-of-kin" instead of "next-of-kin" in the instance; and instead of article* 2 *of the condescendence inserting*—]

The said C. B. died without issue, survived by his brother, G. B., who was thus his next-of-kin, but who died without having expede confirmation to his estate. The pursuer is the son and next-of-kin [*or* executor-nominate and universal legatory, conform to settlement [*describe it*] produced], and thus the representative of the said G. B., the next-of-kin of the said C. B.

PLEA IN LAW.

[*As in No.* 1, *substituting "representative of the next-of-kin" for "next-of-kin."*]

3. For Appointment of Executor-Dative qua Relict or Husband.

[*As in No.* 1, *substituting "relict" or "husband" for "next-of-kin," and for Cond.* 2 *substituting—The pursuer is the relict* [*or husband*] *of the said C. B.*]

PLEA IN LAW.

[*As in No.* 1, *substituting "relict" or "husband" for "next-of-kin."*]

4. By Creditor of Deceased or of Next-of-Kin.

NOTE.—*Confirmation as executor-creditor is really a diligence or execution against the estate of a deceased debtor. For detailed information as to when and how far it is available, reference may be made to Stewart on Diligence, p.* 441 et seq. *It is available not only to creditors of the deceased, but also to creditors of the next-of-kin.*

[*As in No.* 1 *to crave.*]

To decern the pursuer executor-dative *qua* creditor [*or* creditor of next-of-kin] of the deceased C. B. [*designation*].

CONDESCENDENCE.

1. The said C. B. died at on 19 , and had at the time of his death his ordinary or principal domicile in the county of .

2. The pursuer is a creditor of the said C. B. to the extent of £ , conform to promissory note for that sum, dated 19 , granted by the said C. B. in favour of the pursuer, and payable three months after date, herewith produced, with interest at 5 per cent. thereon from 19 , when the said note fell due [*or* conform to extract decree [*describe it*] herewith produced].

[*or* Conform to bond by the said C. B. [*describe it*] to which the pursuer acquired right by assignation [*describe it*].]

[*or* Conform to decree *cognitionis causa* by the Lords of Council and Session [*describe it*] which [*or* an extract of which] is herewith produced.]

[*Or where by creditor of next-of-kin, say:*

2. The said C. B. died intestate, and was survived by D. B., his only son and next-of-kin, who declines or delays to expede confirmation to his father's estate. The pursuer is a creditor of the said D. B. to the extent of [*continue as in preceding form*].]

PLEA IN LAW.

The pursuer being a creditor of the said C. B., is entitled to be decerned his executor-dative.

[*or* The pursuer being a creditor of the said D. B., the next-of-kin of the said deceased C. B., is entitled to be decerned executor-dative to the said C. B.]

An advertisement of the application must be inserted in the first issue of the Edinburgh Gazette after presentation of the petition, whenever (as is usually the case) the creditor is only to confirm to so much of the estate as will suffice to pay his claim. The notice may be in the following form:—

A petition has been presented in the Sheriff Court of at , by A. B. [*designation*], for decerniture as executor-dative *qua* creditor to the deceased C. B. [*designation*].

5. For Appointment of Executor-Dative qua Funerator.

[*As in No.* 1, *inserting "funerator" instead of "next-of-kin" in the instance, and for Cond.* 2 *substituting*—]

The pursuer is funerator of the said C. B., having taken charge of the funeral arrangements and paid the undertaker's account, amounting to £ , which account, duly discharged, is herewith produced. The estate left by the said C. B. is of small amount, and is believed to be insufficient to pay his debts. He is not known to have left any will, and his only next-of-kin is D. B., who declines to apply for the office of executor [*or state under what other circumstances the application is made*].

PLEA IN LAW.

[*As in No.* 1, *substituting "funerator" for "next-of-kin."*]

[*For Gazette intimation see No.* 4.]

6. For Appointment of Executor-Dative qua Legatee.

[*As in No.* 1, *substituting "legatee" for "next-of-kin," and for Cond.* 2 *substituting*—]

The pursuer is legatee of the said C. B. to the extent of £ , conform to settlement [*describe it*] produced.

PLEA IN LAW.

[*As in No.* 1, *substituting "legatee" for "next-of-kin."*]

7. For Appointment of Executor-Dative qua Statutory Beneficiary.

[*As in No.* 1 *to crave.*]

To decern the pursuer executor-dative *qua* father [*or* mother, *or* brother, *or* sister uterine, *or* child of a predeceasing next-of-kin] to the deceased C. B. [*designation*].

CONDESCENDENCE.

1. [*As in No.* 1.]

2. The pursuer is the father of the said C. B., who died without issue, but survived by brothers and sisters, [*or* their descendants]. The pursuer has right to one-half of the moveable estate of his said son.

[*or* The pursuer is the mother of the said C. B., who died intestate, without leaving issue, and whose father predeceased him. The pursuer has right to one-third of the moveable estate of her said son.]

[*or* The pursuer is a brother [*or* sister] uterine of the said C. B., who died intestate, without leaving issue, or any brothers or sisters german or consanguinean, or their descendants, and whose father and mother both predeceased him. The pursuer has right along with his other brothers and sisters uterine [*if any*] and the descendants of a predeceasing brother [*or* sister] uterine [*if any*] to one-half of the moveable estate of the said C. B.]

[*or* The surviving next-of-kin of the said C. B. were his brothers and sisters, he having died without issue. The pursuer is a son [*or* daughter] of G. B., who was also a brother [*or* sister] of the said C. B., but predeceased him. The pursuer is thus a child of a predeceasing next-of-kin of the said C. B., and has right along with his brothers and sisters [*if any*] and the descendants of a brother [*or* sister] [*if any*] to the share of the moveable estate of the said C. B., to which the said G. B. would have been entitled had he [*or* she] survived the said C. B.]

PLEA IN LAW.

The pursuer, having right to share in the moveable succession of the said C. B., is entitled to be decerned his executor-dative.

8. For Appointment of Executor-Dative by Minors and Pupils, with their Administrator-in-Law, their Tutors and Curators, or their Factor.

NOTE.—*Where the next-of-kin are minors or pupils, or both, they may be decerned executors-dative along with their guardian, whether that be*

their father or administrator, tutors and curators, or a judicial factor. In the latter case it is also competent to appoint the factor alone.

(*a*) Minor and Pupil Next-of-Kin, with their Administrator.

Sheriffdom of at .

A. B. and C. B., *minors*, and D. B., *a pupil*, all children of and residing with G. B. [*designation*], and the said G. B., as their administrator-in-law, *Pursuers*.

The demand of the pursuers is—

For their appointment as executors-dative to the deceased W. B. [*designation*], the said A. B., C. B., and D. B. *qua* next-of-kin, and the said G. B. as their administrator-in-law.

Therefore the pursuers crave the Court—

To decern them executors-dative to the said deceased W. B., the said A. B., C. B., and D. B. *qua* next-of-kin, and the said G. B. as their administrator-in-law.

Condescendence.

1. [*As in No.* 1.]

2. The pursuers A. B., C. B., and D. B. are the nephews and nieces and next-of-kin of the said W. B., who died without issue and predeceased by his only sister, S. B., the wife of the pursuer the said G. B., and mother of the other pursuers. The said G. B. is the father and administrator-in-law of the said A. B., C. B., and D. B.

Plea in Law.

The pursuers, A. B., C. B., and D. B., as next-of-kin to the said W. B., and G. B. as their administrator-in-law, are entitled to be decerned executors-dative to the said W. B., as craved.

(*b*) Minor and Pupil Next-of-Kin, with their Tutors and Curators.

Sheriffdom of at .

A. B. and C. B., *minors*, and D. B., *a pupil*, all children of the deceased W. B. [*designation*], and G. H. [*designation*] and J. K. [*designation*], their tutors and curators, nominated and appointed by the said W. B. in his settlement [*describe it*] herewith produced, *Pursuers*.

The demand of the pursuers is—

For their appointment as executors-dative to the said deceased W. B.,

the said A. B., C. B., and D. B. *qua* next-of-kin, and the said G. H. and J. K. as their tutors and curators foresaid.

Therefore the pursuers crave the Court—

To decern them executors-dative to the said deceased W. B., the said A. B., C. B., and D. B. *qua* next-of-kin, and the said G. H. and J. K. as their tutors and curators.

CONDESCENDENCE.

1. [*As in No.* 1.]

2. The pursuers, A. B., C. B., and D. B., are the children and only next-of-kin of the said W. B. By his trust-disposition and settlement, dated and recorded in the books of Council and Session , herewith produced, the said W. B. nominated and appointed the pursuers, G. H. and J. K., to be tutors and curators to his said children.

PLEA IN LAW.

The pursuers, A. B., C. B., and D. B., as next-of-kin to the said W. B., and G. H. and J. K. as their tutors and curators foresaid, are entitled to be decerned executors-dative to the said W. B.

(*c*) MINOR AND PUPIL NEXT-OF-KIN, WITH THEIR FACTOR.

Sheriffdom of at .

A. B. and C. B. *minors*, and D. B., *a pupil*, all children of the deceased W. B. [*designation*], and G. H., factor on the executry estate of the said deceased W. B., conform to appointment by the Sheriff of , dated .

The demand of the pursuers is—

For their appointment as executors-dative to the said deceased W. B., the said A. B., C. B., and D. B. *qua* next-of-kin, and the said G. H. as their factor foresaid.

Therefore the pursuers crave the Court—

To decern them executors-dative to the said deceased W. B., the said A. B., C. B., and D. B. *qua* next-of-kin, and the said G. H. as their factor foresaid.

CONDESCENDENCE.

1. [*As in No.* 1.]

2. The pursuers, A. B., C. B., and D. B., are the children and next-of-kin of the said deceased W. B. By decree dated the said G. H. was appointed by the Sheriff of factor on the executry estate of the said deceased W. B.

PLEA IN LAW.

[*As in previous form, substituting*—"*G. H. as their factor foresaid.*"]

(*d*) FACTOR FOR MINOR AND PUPIL NEXT-OF-KIN.

Sheriffdom of at .

G. H. [*designation*], factor for A. B. and C. B., *minors*, and D. B., *a pupil*, all children of the deceased W. B. [*designation*], on the executry estate of the said deceased W. B., conform to appointment by the Sheriff of , dated , *Pursuer.*

The demand of the pursuer is—

For his appointment as executor-dative to the said deceased W. B., *qua* factor to his said minor and pupil children and next-of-kin on his executry estate.

Therefore the pursuer craves the Court—

To decern him executor-dative to the said deceased W. B., *qua* factor for his minor and pupil next-of-kin on his executry estate.

CONDESCENDENCE.

[*As in previous form.*]

PLEA IN LAW.

The pursuer, as factor foresaid for the minor and pupil children of the said deceased W. B., is entitled to be decerned executor-dative *qua* factor to the said deceased W. B.

(*e*) CURATOR BONIS AND FACTOR LOCO TUTORIS TO NEXT-OF-KIN.

[*As in previous form, substituting in the instance "curator bonis* to A. B. and C. B., and factor *loco tutoris* to D. B., all children, &c., conform to act and decree of the Lords of Council and Session, dated , an extract of which is herewith produced"; *in the statement of claim and crave, "qua curator bonis* and factor *loco tutoris* to his next-of-kin"; *in Cond.* 2, "Pursuer is *curator bonis* and factor *loco tutoris* to the said A. B., C. B., and D. B., who are the children and next-of-kin of the said deceased W. B., conform to act and decree foresaid"; *and in the plea in law,* "as *curator bonis* and factor *loco tutoris* to the next-of-kin of the said deceased W. B., is entitled, &c., *qua curator bonis* and factor *loco tutoris.*"]

(*f*) JUDICIAL FACTOR ON DECEASED'S ESTATE.

Sheriffdom of at .

G. H. [*designation*], judicial factor on the [trust] estate of the deceased W. B. [*designation*], conform to act and decree of the

Lords of Council and Session, dated , an extract of which is herewith produced, *Pursuer.*

The demand of the pursuer is—

For his appointment as executor-dative to the said deceased W. B., *qua* judicial factor on his [trust] estate.

Therefore the pursuer craves the Court—

To decern him executor-dative to the said deceased W. B., *qua* judicial factor on his [trust] estate.

CONDESCENDENCE.

1. [*As in No.* 1.]

2. The pursuer is judicial factor on the estate of the said W. B. [*or* on the trust estate of the said W. B., under his trust-disposition and settlement, dated , and recorded in the Books of Council and Session , in which the said W. B. nominated and appointed M. N. and O. P. [*designations*] to be his trustees and executors, but who both declined to accept office.]

PLEA IN LAW.

The pursuer, as judicial factor foresaid, is entitled to be decerned executor-dative to the said deceased W. B., *qua* judicial factor on his [trust] estate.

9. Where County of Domicile Uncertain.

Where the county of the deceased's domicile is doubtful, but it is certainly within Scotland, the averment as to domicile will be, died at on , 19 , without any fixed or known domicile, except that the same was in Scotland. *In such a case the petition must be in the Edinburgh Sheriff Court.*

10. Where Domicile furth of Scotland.

NOTE.—*Where the deceased was domiciled at his death furth of Scotland, several cases may arise requiring the appointment of an executor-dative*—(1) *If there is a will containing an appointment of executors, no application is necessary.* (2) *Where there is a will but it contains no appointment of executors, any beneficiary will usually be appointed. But effect is sometimes given to the provisions of the law of the domicile so as to dispense with the necessity for the appointment of executors.* (3) *Where the deceased died intestate, any person who by the law of the domicile is entitled to the office will be decerned executor-dative.* (4) *Where the domicile is doubtful, the appointment will be made in accordance with the law of the*

place where he was last domiciled (unless that was abandoned) or of his domicile of origin.

In all these cases the application must be in the Sheriff Court of Edinburgh.

In almost all such cases the petition is in exactly similar terms to those already given, except that the condescendence will contain a statement that the late C. D. [*designation*] died at on , and had thus, at the time of his [*or* her] death, his [*or* her] ordinary or principal domicile furth of Scotland, and that the pursuer is by the law of , where the said C. D. was domiciled at the time of his [*or* her] death, entitled to the administration of his [*or* her] estate; *and the plea in law will be,* The pursuer being by the law of the deceased's domicile entitled to the administration of his [*or* her] personal estate, should be decerned executor-dative as craved.

Sometimes an opinion of foreign counsel as to the applicant's right to administer is produced.

(*a*) For Appointment of Executor-Dative, Conform to Opinion on Foreign Law.

Sheriffdom of the Lothians and Peebles, at Edinburgh.

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For appointment as executor-dative to the deceased C. B. [*designation*], *qua* [*insert character in terms of opinion*].

Therefore the pursuer craves the Court—

To decern him [*or* her] executor-dative, *qua* [*insert character in terms of opinion*] to the said deceased C. B.

Condescendence.

1. The late C. D. died at on , and had at the time of his death his ordinary or principal domicile furth of Scotland.

2. The pursuer is [*state relationship, or other character giving right to office in accordance with opinion*], and is by the law of , where the deceased died domiciled, entitled to the administration of his estate, conform to opinion by X. Y. [*designation and qualifications*] herewith produced.

Plea in Law.

The pursuer, being entitled by the law of , where the said C. B. died domiciled, entitled to the administration of his estate, should be decerned executor-dative *qua* to the said deceased.

CERTIFICATE.

[*There is no express form for the opinion or certificate, but the following are suggested:*—]

(a) *Intestate Succession.*

I, A. B. [*designation*], being well acquainted with the law of the of , certify that the deceased having died intestate, his children [*or* relict, *or* father, *or* mother, *or as the case may be*] are by the law of entitled to succeed to and administer his estate.

(b) *Testate Succession.*

I, A. B. [*designation*], being well acquainted with the law of the Kingdom of , certify—

1. That the will of W. B. [*designation*], of which the prefixed is a notarial copy, is validly executed according to the law of .

2. That the said copy is duly authenticated, and entitled to the same credit and effect as the original will.

3. That the testamentary executors named therein are entitled to obtain possession of the deceased's estate, without giving sureties or finding caution.

[*Sometimes the certificate is granted by the consul of the country, in which case it will be in similar terms, omitting only the statement as to acquaintance with the law of the country.*]

(*b*) CONFORM TO APPOINTMENT IN FOREIGN COURT.

Sheriffdom of the Lothians and Peebles, at Edinburgh.

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For his appointment as executor-dative *qua* [*state relationship or other character*] of the deceased C. B. [*designation*].

Therefore the pursuer craves the Court—

To decern him executor-dative *qua* [*state relationship or other character*] of the said deceased C. B.

CONDESCENDENCE.

1. [*As in previous form.*]

2. The pursuer is the [*relationship*] of the said C. B. and administrator [*or* curator] of his personal estate, appointed by [*describe Court*], within whose jurisdiction the said C. B. died domiciled, conform to letters of administration [*or other writ instructing the appointment*] herewith produced.

PLEA IN LAW.

The pursuer, being the administrator [*or* curator] of the personal estate of the deceased C. B., conform to appointment foresaid, is entitled to be decerned his executor-dative *qua* [*state relationship or character*].

11. Where Domicile Uncertain.

Sheriffdom of the Lothians and Peebles, at Edinburgh.

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For his appointment as executor-dative *qua* [*state character*] to the deceased C. B. [*designation*].

Therefore the pursuer craves the Court—

To decern him executor-dative *qua* [*character*] to the said deceased C. B.

CONDESCENDENCE.

1. The late C. B., sometime merchant in Glasgow, thereafter residing in San Francisco, and thereafter in Sydney, was drowned by the foundering of the s.s. *City of Paris* while on a voyage from Sydney to New York. At the date of his death the said C. B. had no fixed or known domicile. The said C. B. died unmarried and intestate.

2. The pursuer is the [*relationship*] of the said deceased, and by the law of the State of California, and of the colony of New South Wales, as well as by the law of Scotland, in one or other of which countries the said C. B. died domiciled, the pursuer is entitled to the administration of his estate.

PLEA IN LAW.

The pursuer, as the [*relationship*] of the deceased C. B., being entitled to the administration of his estates, should be decerned his executor-dative *qua* [*character*].

12. On Decree under Presumption of Life Act, 1891.

[*Instance and crave as in Form* 1.]

CONDESCENDENCE.

1. The said C. B. is presumed to have died on 19 , conform to extract decree of the Sheriff of , dated 19 , herewith produced.

2. At the time at which he is presumed to have died the said C. B. was domiciled in Scotland [*or as the case may be*].

3. The pursuer is the only [*relationship*] of the said C. B., and his next-of-kin.

PLEA IN LAW.

The said C. B. being presumed dead, the pursuer, as his next-of-kin, is entitled to be decerned his executor-dative.

13. For Appointment of Executor-Dative ad omissa (et male appretiata).

Sheriffdom of at .

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For appointment as executor-dative *ad omissa* [*et male appretiata*] *qua* next-of-kin [*or as the case may be*] to the deceased C. B. [*designation*].

Therefore the pursuer craves the Court—

To decern him executor-dative *ad omissa* [*et male appretiata*] *qua* next-of-kin [*or as the case may be*] to the said deceased C. B.

CONDESCENDENCE.

1. [*As in Form* 1.]

2. An inventory of the personal estate of the said C. B. was given up and recorded in the Court books of the Sheriff Court of , at , and confirmation thereof expede on in favour of G. B. [*designation*] as executor-dative, *qua* next-of-kin [*or as the case may be*] to the said C. B. [*or* as executor-nominate of the said C. B., under his trust-disposition and settlement, dated and recorded in the books of Council and Session].

3. The said G. B. died at , on the , and the pursuer is a son and next-of-kin of the said C. B. [*or as the case may be*].

4. There was omitted from said confirmation certain estate belonging to the said C. B. [*or* certain items of estate, though included in the said confirmation, were undervalued] to which omitted estate [*or* to the omitted value of said items] it is necessary that a title should now be made up by confirmation, in order to enable the pursuer to uplift and discharge the same.

PLEA IN LAW.

The pursuer being the next-of-kin [*or as the case may be*] of the said C. B. is, in the circumstances condescended on, entitled to be decerned his executor-dative *ad omissa* [*et male appretiata*] *qua* next-of-kin [*or as the case may be*].

14. For Appointment of Executor-Dative ad non executa.

Sheriffdom of at .

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For appointment as executor-dative *ad non executa qua* next-of-kin [*or* legatee, *or other title*] to the deceased C. B. [*designation*].

Therefore the pursuer craves the Court—

To decern him executor-dative *ad non executa qua* next-of-kin [*or* legatee, *or other title*] to the said deceased C. B.

CONDESCENDENCE.

1. [*As in Form* 1.]

2. An inventory of the personal estate of the said C. B. was given up and recorded in the books of the Sheriff Court of , at , and confirmation thereof expede on in favour of G. B. [*designation*] as executor-dative *qua* next-of-kin [*or as the case may be*] of the said C. B. [*or* as executor-nominate of the said C. B. under his trust-disposition and settlement, dated , and recorded in the books of Council and Session .]

3. The said G. B. died at , on , leaving part [*or* the whole] of the estate confirmed by him untransferred to the persons entitled thereto, part thereof being still unuplifted and part uplifted and reinvested, or remaining in the said executor's hands [*or as the case may be*], and it is necessary that a title should now be made up by the appointment of an executor *ad non executa* to continue and complete the administration of the estate contained in the said confirmation.

4. The pursuer is a son and next-of-kin of the said C. B. [*or* a legatee of the said C. B. under the said trust-disposition and settlement, which is herewith produced, *or as the case may be*].

PLEA IN LAW.

The pursuer being the next-of-kin [*or as the case may be*] of the said C. B. is entitled in the circumstances condescended on to be

deceased his executor-dative *ad non executa qua* next-of-kin [*or as the case may be*].

B. For Confirmation of Executors-Nominate.

NOTE.—*Where there is any irregularity in the deed appointing the executor, or from any other cause the nomination is doubtful, the authority of the Sheriff may have to be obtained before confirmation will be issued.*

15. Sheriffdom of at .

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For confirmation as executor-nominate of the deceased C. B. [*designation*].

Therefore the pursuer craves the Court—

To grant warrant for his confirmation as executor-nominate of the said deceased C. B.

CONDESCENDENCE.

1. [*As in Form* 1.]

2. By settlement, dated 19 , herewith produced [*or* an extract of which is herewith produced], the said C. B. conveyed his whole estate to the pursuer, and directed him to dispose of the same as therein directed; but it contained no direct nomination of executors. From the terms and whole tenor of the said settlement it is apparent that the testator's intention was that the pursuer should act as his executor. Under the said settlement the pursuer is entitled to at least one-half of the whole of his said father's estate.

[*or* By settlement, dated , herewith produced [*or* an extract of which is herewith produced], the said C. B. directed "his only son and his children" [*or as the case may be*] to be his sole executors and universal legatees. The late G. B. [*designation*] was his only son and the pursuer is the only son of the said G. B.]

[*or* The said G. B. left a settlement, dated , herewith produced [*or* an extract of which is herewith produced], which bears to have been duly executed in presence of two witnesses. Said settlement, however, contains a number of erasures and interlineations which are not authenticated. In particular the names of G. H. and J. K. are inserted therein as names of his executors, but said names are deleted and the name of pursuer interlined above in pencil. The said settlement, including the interlineations, is holograph of the deceased. The said G. H. and J. K., who have no interest in the deceased's succession, have declined the office of executor.]

[*or* By settlement dated , herewith produced [*or* an extract of which is herewith produced], the said C. B. nominated and appointed "A. B." to be his sole executor, but he did not add any designation by which the said "A. B." could be identified. The pursuer, who is an old friend of the said C. B., avers that he was the person so intended by the said deceased to be his executor.]

[*or* By settlement, &c. [*as above*], the said C. B. nominated and appointed A. B., whom he designed as "engineer, residing at Royal Terrace, Partick." No person of that name exists to whom that designation exactly applies. The pursuer, however, who was an old friend of the said deceased, and who is an "electrical engineer, residing at Royal Crescent, Glasgow," avers that he is the person who was intended by the deceased to act as his executor.]

[*or* By settlement, &c. [*as above*], the said C. B. disponed and assigned his whole [personal] [*or* the residue of his whole [personal]] estate to G. B. and "his heirs and assignees" [*or* "his executors and representatives whomsoever"]. The said G. B. predeceased the said C. B., and the pursuer is his son and sole next-of-kin, and as such his heir *in mobilibus* [*or* the pursuer is the executor-nominate of the said G. B. under his settlement, dated]. The pursuer is thus the substitute general disponee [*or* universal [*or* residuary] legatee], and as such executor-nominate of the said G. B., conform to writs produced herewith.]

[*or* By settlement, &c. [*as above*], the said C. B. appointed the pursuer and G. B. to be his executors. The said G. B., who is now resident [*or* who is believed to be resident] in Australia, has no beneficial interest in the deceased's estate. It is necessary, in the interest of the estate, that speedy confirmation be obtained, and it would be injurious to the estate to delay confirmation until it is ascertained whether the said G. B. will accept office [*or* till the present address of the said G. B. is ascertained, no communication having been received from him by his friends and relations for many years]. The pursuer is able by himself to realise and distribute the estate among the beneficiaries, and craves to be confirmed executor-nominate to the said C. B., under obligation to assume the said G. B., should he so desire, on his return to this country.]

[*or* By settlement, dated, &c. [*as above*], the said C. B. appointed the pursuer his sole executor, and he has applied for confirmation in the ordinary manner. He has, however, received information from the Sheriff-Clerk that objections to his confirmation have been lodged by G. H. [*designation*], and that confirmation cannot be issued without the authority of the Court [*state averments meeting objections*].]

[*or* By settlement, &c. [*as above*], the said C. B. nominated and appointed the pursuer to be his sole executor. The said settlement was subscribed by G. H. and J. K. [*designations*] as witnesses, but their designations were neither appended to their signatures nor incorporated in the testing clause. The said settlement was recorded in the Books of Council and Session on , and the designations of the witnesses cannot therefore be now added. In respect of this informality in the execution of the said settlement, and in order to prove its due execution, this application is made in terms of the provisions of sec. 39 of the Conveyancing (Scotland) Act, 1874.]

PLEA IN LAW.

The deceased C. B. having by his said settlement appointed the pursuer to be the executor thereof, warrant should be granted, as craved.

C. Recall of Decree-Dative.

16. For Recall of Decree-Dative and for Substitution or Conjunction in Appointment of Executor.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
S. W. or B. [*designation*], *Defender*.

The demand of the pursuer is—

For recall of the appointment of defender as executor-dative of the deceased W. B. [*designation*], and for decree decerning pursuer executor-dative *qua* next-of-kin to the said W. B. instead; or alternatively, for the appointment of pursuer as executor foresaid in conjunction with the defender.

Therefore the pursuer craves the Court—

To direct intimation of this application to be made to defender or her agent; thereafter to recall the decree in defender's favour, and to decern pursuer executor-dative *qua* next-of-kin to the said W. B., or alternatively to decern pursuer along with defender as executors-dative *qua* next-of-kin to the said W. B.; and to find defender liable in expenses in the event of her offering opposition hereto.

CONDESCENDENCE.

1. The said W. B. died at on 19 , and had at the time of his death his ordinary or principal domicile in the county of

. He was survived by the defender, who was his second wife, and by the pursuer, his only surviving child. He died intestate, leaving moveable estate to a considerable amount, but no heritage.

2. By decree of your Lordship, the defender was on . 19 , decerned executor-dative *qua* relict to the said W. B., but she has not yet extracted the said decree or expede confirmation.

3. The said defender resides in England, and has no other interest in the succession of her said husband than her *jus relictæ*. The pursuer, as only child and next-of-kin of his father, is entitled to two-thirds of his moveable estate.

4. The pursuer has applied [*or* is about to apply] for his appointment as executor-dative *qua* next-of-kin to his said father, and has a preferable right to the said office.

PLEAS IN LAW.

1. The pursuer, as only child and next-of-kin of the deceased, is entitled to be preferred to the office of executor-dative, and to have the decree in favour of the defender recalled.

2. The pursuer, being equally entitled with the defender to be executor-dative to the said W. B., should be conjoined with the defender in said office.

MINUTE FOR RECALL.

[*An appointment may, where the right to recall is plain, be recalled by minute written on the petition.*]

A., for the pursuer, stated that since the date of the decree on the foregoing petition, a will executed by the said W. B. [*deceased*], containing an appointment of executors, had been found, and craved the Court to recall the said decree accordingly.

[*The foregoing form can be changed to suit varying circumstances.*]

D. For Restriction of Caution.

NOTE.—*The amount of caution to be found by an executor-dative may, on application to the Court, be restricted. The petition should state fully the circumstances as to* (1) *the debts due from the estate, and how far these have been discharged, and* (2) *the several interests of beneficiaries. Beneficiaries may consent to the proposed restriction by minute signed by themselves* (*not an agent*). *The consent may be written on the petition. Where there are no objections, and the debts have been paid, and all the beneficiaries are minor and consent, the caution may be restricted to from* 5 *to* 10 *per cent. of the amount confirmed. Otherwise the sum will be not less than the interests of the non-consenting creditors and beneficiaries.*

17. (A.) For Restriction of Caution.

Sheriffdom of at .

A. B. [*designation*], executor-dative of the deceased W. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For restriction of the caution to be found by the pursuer as executor foresaid.

Therefore the pursuer craves the Court—

To appoint this application to be intimated in such newspapers as to the Court shall seem proper, and thereafter to restrict the caution to be found by the pursuer as executor foresaid to the sum of £ .

CONDESCENDENCE.

1. The said W. B. died at on 19 , intestate, and domiciled in the county of .

2. The petitioner was, on 19 , decerned executor-dative *qua* next-of-kin to the said W. B., and has given up an inventory of his personal estate, amounting to £ , and desires confirmation thereof.

3. The pursuer is unable to find caution for the full amount of his intromissions as executor, being without relatives or friends in a position to become surety for him.

4. The whole of the deceased's debts [except a sum of £], and also his funeral expenses, have been paid, and the only parties interested besides the pursuer in the said W. B.'s estate are , who consent to this application.

PLEA IN LAW.

As the interests of all parties concerned in the estate of the said W. B. will be sufficiently protected by the restricted caution offered, decree should be granted, as craved.

ADVERTISEMENT.

A petition having been presented to the Sheriff of at , by A. B. [*designation*], for restriction of the caution to be found by him as executor-dative of W. B. [*designation*] to the sum of £ , any objections thereto must be lodged with the Sheriff Clerk within days from the date of this advertisement.

19 . [*Name and address of agent.*]

18. (B.) For Warrant to Accept Company as Cautioner.

Special authority must be obtained before a company will be accepted as cautioner. The company must be subject to the jurisdiction of the Scottish Courts, and must have been approved in some previous application, either by the Supreme Court or the Accountant of Court.

[*As in previous form to demand.*]

For a warrant to the Sheriff Clerk to accept a bond of caution by the Company, Limited, for the pursuer as executor-dative of W. B. [*designation*].

Therefore the pursuer craves the Court—

To grant warrant to the Sheriff Clerk to accept a bond of caution by the said company for the pursuer as executor-dative of the said W. B.

CONDESCENDENCE.

1, 2, and 3 [*as in previous form*].

4. In these circumstances the pursuer tenders the Company, Limited, as his cautioner. The said company has its head [*or* a branch] office in Scotland, and a copy of its last balance-sheet is herewith produced.

PLEA IN LAW.

The caution offered being sufficient, warrant should be granted, as craved.

19. Affidavits as to Execution, &c., of Will.

(1) AS TO HOLOGRAPH WILL.

Where a holograph will does not contain a statement that it is holograph, it is necessary to prove that it is so, which is usually done by an affidavit appended to the will or extract, or to the executor's oath on petition.

At the day of 19 ; In presence of , one of His Majesty's Justices of the Peace for the county of :

Compeared R. S. [*designation*] and T. W. [*designation*], who, being solemnly sworn and examined, depone that they are well acquainted with the handwriting of the deceased W. B. [*designation*], and have

seen and examined the foregoing will, and that to the best of their knowledge and belief it is entirely in the handwriting of the said W. B. All which is truth, as the deponents shall answer to God.

(2) As to English Will.

I, R. S. [*designation*], make oath and say that I am one of the subscribing witnesses to the will of C. B. [*designation*], hereunto annexed, bearing date 19 , and that the said testator executed the said will on the day of the date thereof, by signing his name at the foot or end thereof, as the same now appears thereon, in the presence of me and of T. W. [*designation*], the other subscribing witness thereto, both of us being present at the same time, and we therefore attested and subscribed the said will in the presence of the said testator.

A. B.

Sworn at on 19 , before me,

, *J.P.*

20. For Declarator of Right to Shares Registered in Third Party's Name.

(*See* Declarator, No. 11.)

Exhibition.—*See also* Accounting, and Delivery, No. 4.

1. For Exhibition and Delivery of Titles.

Note.—*The action of exhibition is now not very common in practice; its purpose being generally attained by a direct action for delivery. It is, however, the appropriate action where the pursuer is entitled to delivery either as proprietor or rightful custodian of titles or writs. It is now competent in the Sheriff Court. The proper course is to ask for exhibition in the hands of the Clerk of Court* (*Clerk*, 8 *R.* 81).

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*] and E. F. [*designation*], heir-at-law of the deceased G. H. [*designation*], *Defender.*

The demand of the pursuer is—

For exhibition and delivery of the titles of the subjects after described.

Therefore the pursuer craves the Court—

To ordain the defender C. D. to exhibit in the hands of the Clerk of Court the whole writs and titles in his possession or under his control of and relating to [*describe subjects*], and to grant warrant to the Clerk of Court to deliver to pursuer the documents so exhibited; and to find the defender C. D., and also, in the event of his offering opposition hereto, the defender G. H., liable in expenses.

CONDESCENDENCE.

1. On 19 the pursuer obtained decree of adjudication of the subjects and others mentioned in the crave hereof against the said G. H., then proprietor thereof, and on he recorded the said decree in the Division of the Register of Sasines for the county of . On the pursuer further obtained decree in an action of expiry of the legal of said subjects and others against the said G. H. The extract decrees in said actions are herewith produced.

2. On the said G. H. died intestate. He was predeceased by his wife, and left only one child, the defender G. H., who is thus both his heir-at-law and next-of-kin.

3. The pursuer desires to sell the subjects acquired under the said adjudication, and is advised that it will be necessary, or at least desirable, that he should obtain possession of the title-deeds of the said subjects. With this view he applied to the defender C. D., who was agent for the said deceased G. H., and in whose custody the titles of the said subjects are, for delivery thereof. He, however, refuses or delays to deliver them.

4. The pursuer, in virtue of the said decrees of adjudication and expiry of the legal, has sole right to the said titles.

PLEA IN LAW.

The pursuer, having sole right to the said titles, is entitled to decree, with expenses, as craved.

2. For Exhibition and Transumpt.

NOTE.—*This action also is now rare in practice, as all recent deeds are recorded in some register. There are, however, still cases where the titles to property stand on deeds which are not recorded, and in such cases an action of transumpt may be of use.*

The pursuer must call as defenders—(1) *the person in whose custody the deeds are, and* (2) *if he be a different person, the person* (*or his representatives*) *who granted the obligation under which the pursuer has right to exhibition of the deeds.*

The transumpt or collated copy is signed by the Clerk of Court, and, except in case of improbation, is equivalent to the original deed.

The action is competent in the Sheriff Court.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*] and E. F. [*designation*] for any interest he may have, *Defenders.*

The demand of the pursuer is—

For exhibition of the writs and titles relating to the subjects after mentioned, in order that transumpts thereof may be made and delivered to pursuer.

Therefore the pursuer craves the Court—

To ordain the defender C. D. to exhibit, in the hands of the Clerk of Court, the whole writs and titles in his possession or under his control of and relating to [*describe subjects*], and in particular—(1) Tack by R. S. in favour of M. T., dated ; (2) assignation thereof by the said M. T. in favour of S. W., dated ; (3) assignation thereof by the said S. W. in favour of the said C. D., dated , belonging to him, in order that the said documents may be transumed, and transumpts thereof, authenticated by the Clerk of Court, delivered to the pursuer; and to declare said transumpts to be as valid and effectual for every purpose as if they had been extracts from the public registers of said deeds; and in the event of the defenders, or either of them, offering opposition hereto, to find them, or either of them, liable in expenses.

CONDESCENDENCE.

1. The defender C. D. is lessee of the subjects described in the prayer of the petition under the tack therein mentioned. The said tack is dated 18 , and is for the term of 250 years from and after the term of Whitsunday 18 . The said tack and the first two assignations thereof are not recorded in any public register, and the said tack cannot be recorded under the Registration of Long Leases Act, because it does not comply with the statutory requirements, in respect that .

2. By assignation, dated 18 , and recorded in the Sheriff Court Books of 18 , the defender E. F. assigned to the pursuer one-half of the subjects described in the prayer of the petition and held by him under the said lease. On the subjects so acquired by

him the pursuer has erected three tenements of dwelling-houses. The said assignation, an extract of which is herewith produced, contains a clause of assignation of writs in the following terms [*quote clause*]. The defender E. F. subsequently assigned the rest of his rights under the said lease to the defender C. D. by assignation, dated 18 , and recorded in the Sheriff Court Books of 18 . As part of his title to the subjects so assigned, the defender C. D. obtained the writs mentioned in the prayer of the petition, and they are still in his possession or under his control.

3. The pursuer has from time to time sold several of the houses erected by him on the said leasehold subjects, and for that purpose he had frequently to borrow from the defender E. F.'s agents the lease and other titles of said subjects. The said deeds, and particularly the said tack, are now from age and use much worn and in parts nearly illegible. In these circumstances, and in order to avoid the expense and inconvenience of constantly borrowing the said writs, and also the risk of the said deeds being lost or damaged, the pursuer considers it advisable that transumpts of the deeds mentioned in the prayer of the petition should be obtained, and makes this application to the Court for that purpose.

PLEA IN LAW.

The said deeds being part of the pursuer's title to his property as condescended on, he is entitled to have transumpts thereof made and delivered to him, as craved.

3. For Exhibition, Delivery, and Interdict, or Payment.

Sheriffdom of at .

A. B. & Co. [*designation*], *Pursuers*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuers is—

For exhibition of a list of pursuers' goods presently in defender's possession, for delivery of said goods, for interdict against defender disposing of said goods, and failing such exhibition and delivery, for payment to pursuers of £100 with interest, and for expenses.

Therefore the pursuers crave the Court—

To ordain the defender to exhibit a list of goods belonging to pursuers presently lying in defender's premises at , and to deliver said goods to pursuers; in any event, to ordain

the defender to deliver to pursuers (1) [*enumerate articles, numbering each separately*], and to interdict defender from disposing of or interfering with said goods, or any of them, and to grant interim interdict; and failing production and delivery as aforesaid, to grant a decree against the defender for payment to the pursuers of £100 with interest from the date of citation; and to find defender liable in expenses.

CONDESCENDENCE.

1. The pursuers are manufacturers in . The defender is in Glasgow, and is proprietor of the office at No. Street, Glasgow.

2. In the beginning of 19 , J. T., commission agent in , was appointed by the pursuers their agent in Glasgow for obtaining orders for their goods. In connection with said appointment, the pursuers placed in the defender's custody, for exhibition to intending purchasers, samples of their manufactures, and in particular the several articles enumerated in the prayer of the petition. The said articles were solely for exhibition to customers and not for sale, and were all stamped with the pursuers' name.

3. At the term of Whitsunday last, the said J. T., as the pursuers believe, leased from the defender the premises at No. Street, Glasgow, which he used as an office. The above-mentioned samples of the pursuers' goods were kept by the said J. T. on the premises in question, and there shown to intending customers.

4. In the month of last the said J. T. absconded, being at the time largely indebted to the pursuers for monies collected by him, and he has not since been heard of. On 19 the pursuers applied to the defender, who had taken possession of and locked up the premises at Street, for permission to remove the said samples, but this the defender refused, alleging that they fell under his hypothec as landlord, and he has since, as the pursuers believe, carried through a pretended sequestration of the goods in the said premises, including the pursuers' samples, for payment of the rent alleged to be due to Martinmas last.

PLEAS IN LAW.

1. The goods in question being the pursuers' property, they are entitled to delivery thereof.

2. The said goods having been placed in the custody of the said J. T. for exhibition only, and he having no right to pledge or transfer

the property thereof, they do not fall under the hypothec or sequestration of the defender.

Exhumation.—*See* DISINTER.

Exoneration.—*See* MULTIPLEPOINDING; TRUST.

Extension of Burgh.—*See* POLICE ACTS and ROYAL AND PARLIAMENTARY BURGHS.

Factor, for Accounting against Superseded.—*See* ACCOUNTING, No. 6.

Factors, Judicial.

NOTE.—*The statutory powers of the Sheriff Court as to the appointment of factors, &c., are contained in the Judicial Factors (Scotland) Act,* 1880, *and relative Act of Sederunt,* 14*th January* 1881. *The Act empowers Sheriffs to appoint judicial factors on estates not exceeding the total yearly value of* £100.

This power of appointment of judicial factors is, however, limited to factors loco tutoris, *and curators to insane persons, and* (*Penney,* 22 *R.* 5) *curators to minors. "The yearly value" is ascertained as to heritage by the Valuation Roll, and as to moveables by taking* 4 *per cent. on the capital value. If neither method is applicable, the Sheriff must fix the value. The Sheriff must have reasonable evidence of value before making the appointment.*

The application is made by petition, in the ordinary form in use in the Sheriff Court, to the Sheriff of the county in which the ward resides, and all future applications in regard to the same estate, i.e. *applications for powers, renewal, interim audit, recall, removal, and discharge, are to form steps in the original process* (*A. S., sec.* 2), *and must be presented to the Court making the original appointment* (*Acc. of Court,* 20 *R.* 573). *These provisions are qualified by the Act, sec.* 4 (9), *in regard to petitions for recall, which may be presented either in the Sheriff Court or Court of Session. If in the Court of Session, the application is presented to Junior Lord Ordinary, and craves for transmission of the original process, for intimation and service of the petition, and for recall or removal;*

the interlocutor ordering service is written on the petition (*Forrest*, 6 *S. L. T.* 92).

The application for appointment must be intimated on the walls of Court and to the Accountant of Court. The Sheriff may order advertisement, which is signed by Sheriff Clerk.

There is an appeal from the Sheriff-Substitute to the Sheriff, where in similar cases in Court of Session a reclaiming note would be competent. The Sheriff is final in all applications to him under the Act, and the Court of Session is final in all applications for recall made to it under the Act.

At common law the Sheriff has power to make appointments of curators ad litem, *factors to confirm as executors on behalf of minors, and also, where necessity arises, a factor in a pending litigation; under secs.* 16 *and* 37 *of the Bankruptcy Act*, 1856, *and for the purpose of regulating interim possession pending appeal.* (*See* BANKRUPTCY, Nos. 9, 18).

1. By Trustee for Factor on Estate Bequeathed to Pupil.

Sheriffdom of at .

A. B. [*designation*], sole trustee on the trust estate of the late C. D. [*designation*], *Pursuer*,

against

E. F. [*designation*] and M. D. and J. D., both residing at , *Defenders.*

The demand of the pursuer is—

For the appointment of a judicial factor *loco tutoris* to G. F., residing at , only son of the deceased H. F. [*designation*].

Therefore the pursuer craves the Court—

To appoint such intimation hereof as the Court may deem proper, and to ordain the said E. F., M. D., and J. D. to lodge answers hereto, if so advised, within eight days: To find and declare that the yearly value of the estate, heritable and moveable, belonging to G. F., residing at , only son of the deceased H. F. [*designation*], does not exceed £100: To nominate and appoint X. Y. [*designation*], or such other person as to the Court shall seem proper, to be factor *loco tutoris* to the said G. F. in terms of the Judicial Factors (Scotland) Act, 1880, with the usual powers; the said factor, before extract, finding caution in terms of the said statute and relative Act of Sederunt of 14th January 1881: To decern *ad interim;* and to find the pursuer entitled to

the expenses of and incident to this application out of the estate belonging to the said G. F.

Condescendence.

1. The pursuer is sole trustee of the said C. D., who died on 19 , under his trust-disposition and settlement, dated 18 , and recorded 19 .

2. By her said trust-disposition and settlement, the said C. D., *inter alia*, bequeathed to her nephew, the said G. F., a small heritable property consisting of a cottage and garden, situated at , and a sum of £100. The assessed rental of said heritable property, as appearing in the Valuation Roll of the county of X., is £13 per annum. The said legacies have vested in the said G. F.

3. H. F., the father of the said G. F., was predeceased by his wife, and died intestate and without nominating tutors to his said son G. F., who is in pupilarity, having been born on the day of . The said G. F. is possessed of no means and estate other than what he succeeds to from his father, which does not, the pursuer believes, exceed £200, and the foresaid legacies. His whole estate is therefore under the yearly value of £100.

4. The pursuer is now in a position to convey and make over to the said G. F. the legacies bequeathed to him as aforesaid, and as the provisions in his favour are the only provisions of said trust-disposition and settlement which remain unfulfilled, the pursuer is desirous that this may be done in order that he may obtain his discharge. But as there is no one legally authorised to receive said legacies and discharge the pursuer, he is under the necessity of presenting the present application for the appointment of a factor *loco tutoris* to the said G. F.

5. The defender E. F. is the only brother of the said H. F., and, so far as known to the petitioner, the only relative of the said G. F. on his father's side. The defenders M. D. and J. D. are two sisters of the testatrix and the deceased S. D. or F., the mother of the pupil, and are the only next-of-kin of the said G. F. on his mother's side.

Plea in Law.

The said G. F. being in pupilarity, and his interests being unprotected, a factor *loco tutoris* should be appointed to him, as craved.

Form of Advertisement.

Notice is hereby given to all having interest, that application has been made to the Sheriff of for the appointment of A. B.

[*designation*] as factor *loco tutoris* (*or* curator bonis *as case may be*) to C. D., &c. (*design him or them*), [*or* by A. B., factor *loco tutoris* to, *or* as *curator bonis* to, C. D., &c., for special powers to do, &c., *or* for discharge of his said office [*as case may be*]], in terms of the Judicial Factors (Scotland) Act, 1880 (43 & 44 Vict. c. 4), and answers fall to be lodged with me on or before the day of .

E. F., *Sheriff-Clerk.*

2. For Curator Bonis to Minor Capax.

Sheriffdom of at .

A. B. [*designation*], son of the deceased C. B. [*designation*], *Pursuer*,

against

[*Defenders are the next-of-kin, at least two on each of father's and mother's side, if there are such*], *Defenders.*

The demand of the pursuer is—

For the appointment of a *curator bonis* to pursuer.

Therefore the pursuer craves the Court—

To appoint such intimation hereof as may be deemed proper by the Court, and to ordain the said defenders to lodge answers hereto, if so advised, within eight days: To find and declare that the yearly value of the estate belonging to the said A. B. does not exceed £100; and to nominate and appoint X. Y. [*designation*], or such other person as the Court may select, to be *curator bonis* to the said A. B., in terms of the Judicial Factors (Scotland) Act, 1880, with the usual powers, he finding caution before extract, in terms of said Act and relative Act of Sederunt of 14th January 1881; and to decern *ad interim.*

CONDESCENDENCE.

1. The said C. B. died on the day of 19 intestate, and without leaving any nomination of curators to his son, the pursuer, who is in minority, having been born on 18 . The said C. B. was predeceased by his wife, and the pursuer was the only child of the marriage.

2. The estate left by the said deceased C. B. consisted of [*specify, showing yearly value to be under* £100]. The said estate falls to the pursuer as the only child of his father. The pursuer has no other estate than the above.

3. Among the pursuer's nearest relatives there is no one able to

undertake the duties of *curator bonis* to the pursuer. [*State reasons*, e.g., *non-age, incapacity, ill-health, residence abroad, &c.*]

4. In these circumstances the present application is made for the appointment of a *curator bonis* to the pursuer, who respectfully suggests X. Y. [*designation*] as a suitable person for the office.

PLEA IN LAW.

The pursuer being unable to choose curators, and requiring the aid of a *curator bonis* in the management of his affairs, decree should be pronounced in terms of the prayer of the petition.

3. For Curator Bonis to Incapax.

Sheriffdom of at .

Mrs. A. B. or C., wife of D. C. [*designation*], and residing at , *Pursuer*,

against

E. C. [*designation*], F. C. [*designation*], and G. C. [*designation*], the only brothers and sister of the said D. C., *Defenders.*

The demand of the pursuer is—

For the appointment of a *curator bonis* to the said D. C.

Therefore the pursuer craves the Court—

To appoint such intimation and service hereof on such persons as may be deemed proper by the Court, and to ordain the said respondents to lodge answers hereto, if so advised, within eight days: To find and declare that the yearly value of the estate belonging to the said D. C. does not exceed £100: To nominate and appoint J. L. [*designation*], or such other person as the Court may select, to be *curator bonis* to the said D. C., in terms of the Judicial Factors (Scotland) Act, 1880, with the usual powers; the *curator bonis* to be so appointed always finding caution before extract, in terms of said Act and relative Act of Sederunt of 14th January 1881; and to decern *ad interim;* and to find the pursuer entitled to the expenses of and incident to this application out of the estate of the said D. C.

CONDESCENDENCE.

1. The said D. C. has been for some time, and is now, in such a mental condition as to be incapable of managing his own affairs, or of giving directions for their management, as appears from the medical certificates produced herewith. The said D. C. is at present an inmate of the Asylum.

2. That the estate of the said D. C. consists of [*give sufficient details to show amount and yearly value, which must be under* £100, e.g.]:—

(1) Dwelling-house situated at , of the yearly value of £30, and the household furniture therein. There is a bond over said house for £ .

(2) £1000 invested in bond and disposition in security over [*subjects*], with interest at the rate of 3½ per cent.

(3) The sum of £ on account current with the Bank. Intimation has been made by the creditor in the bond and disposition in security for £ , that repayment will be required at Martinmas next.

3. There is no issue of the marriage between the pursuer and the said D. C., and the defenders are the whole next-of-kin of the said D. C. so far as known to the pursuer.

4. In the circumstances the pursuer is desirous that a *curator bonis* be appointed to the said D. C., and respectfully suggests X. Y. [*designation*] as a suitable person for the office.

PLEA IN LAW.

The said D. C. being incapable, from mental derangement, of managing his own affairs, or of giving directions for their management, decree should be pronounced in terms of the prayer of the petition.

4. Application to Accountant for Special Powers.

NOTE.—*Applications for special powers in the Sheriff Court take the form of a petition to the Accountant of Court for his written opinion thereon. The Accountant's opinion is then laid before the Sheriff, who grants or refuses the powers* (*A. S.*, 14*th January* 1881).

To the Accountant of Court.

Application for Special Powers by
A. B. [*designation*], judicial factor on the estate of, &c.

On [*date*] the applicant was appointed by the Sheriff-Substitute of shire at to be judicial factor on the estate of [*narrate nature of appointment*], and after finding caution proceeded to administer the said estate.

The estate consists of [*specify the estate, giving items in such detail as seems necessary*].

[*State the powers craved, the circumstances inducing the application, and the benefits which will accrue to estate by the exercise of the powers craved; also any other material circumstances.*]

In these circumstances the applicant desires to obtain from the Court power to [*specify powers desired*]. This application is accordingly made for the opinion of the Accountant of Court thereon in writing, in order that the same may be laid before the Sheriff of .

[*Signature of applicant or of his agent.*]

5. For Recall of Factory.

(1) By Ward for Recall of Appointment of Curator Bonis made while he was Incapax.

Sheriffdom of at .

In the action

A B. [*designation*] and others for appointment of *curator bonis* to C. D. [*designation*],

Note for

The said C. D. [*the application may be at the instance of either the curator or the ward*].

On 19 E. F. [*designation*] was appointed *curator bonis* to the said C. D., who was then of unsound mind, with the usual powers. The said E. F., having found caution, proceeded to administer the estate. His cautioner is R. S. [*designation*].

The said C. D. has now recovered his mental capacity, and is able to resume the management of his own affairs, as appears from the medical certificates produced herewith. He therefore desires to have the said curatory recalled, and craves the Court—

To recall the said curatory, to remit to the Accountant of the Court of Session to examine and report on the accounts of the said E. F. as *curator bonis* foresaid, and, on payment by the said E. F. of any balance which may be found due by him, to exoner and discharge the said E. F. as *curator bonis* foresaid, and to grant warrant for delivery of his bond of caution.

(2) By Factor Loco Tutoris for Recall of his Appointment.

Sheriffdom of at .

In the action

A. B. [*designation*], for factor *loco tutoris* to C. D. [*designation*],

Note for

E. F. [*designation*] as factor foresaid.

On 19 the applicant was appointed factor *loco tutoris* to the said C. D., with the usual powers. He thereafter found caution

—G. H. [*designation*] being his cautioner—and administered the estate of the said C. D. He has regularly lodged accounts of his intromissions.

[*State reason for termination.*]

The estate of the said C. D. consisted of [*specify it, stating generally of what it consists*].

The said estate has been paid over to [*party having right to estate,* e.g. *the ward on attaining majority, or next-of-kin on ward's death, or as case may be*], and the said discharge therefor is produced herewith.

In the circumstances the pursuer desires to obtain his judicial discharge, and prays the Court—

To find that the said factory has come to an end: To remit to the Accountant of the Court of Session to examine and report on the accounts of the said E. F. as factor foresaid, and upon said report being lodged to approve of the said E. F.'s intromissions and management as factor foresaid: To fix the balance, if any, due by him, and on payment of said balance, or on its being consigned in Court, to exoner and discharge the said E. F. as factor foresaid, and to find him entitled to the expenses of this application out of the said estate; and to grant warrant for delivery of his bond of caution.

Farm.—*See* INSPECTION; LEASE.

Fences.—*See* DECLARATOR, No. 18; INSPECTION; LEASE.

Feu.—*See also* ENTAIL; GLEBE; IRRITANCY; REMOVING.

Feu, for Declarator of Conventional Irritancy of.—*See* DECLARATOR, No. 4.

Feu, for Statutory Irritancy of, Ob non solutem canonem.—*See* DECLARATOR, No. 5.

Feu-Duty, for, in Lieu of Carriages and Services.—*See* CARRIAGES AND SERVICES.

Field, Declarator of Property in.—*See* COMMON PROPERTY; DECLARATOR; SERVITUDE.

Filiation.—*See* ALIMENT, No. 4.

Finance Act, 1894.—*See* APPEAL.

Fire and Air, House, for Order to.—*See* HOUSE.

Fishing, for Declarator of Right of.—*See* DECLARATOR, No. 3.

Fixtures, for Interdict against Removing.—*See* INTERDICT.

Flooding of House, Damages for.—*See* REPARATION, No. 9 (1).

Foreigner, to Found Jurisdiction against.—*See* ARRESTMENT, No. 1.

Fraud, for Damages for.—*See* REPARATION. *See also* BANKRUPTCY, Nos. 31, 34.

Freight.—*See* SHIPPING, No. 13.

Friendly Societies Act, 1896.

Actions against Societies.

Friendly Societies sue and are sued in the names of their trustees or other officers authorised by the rules, without other description than the titles of their offices.

A summons is sufficiently served by personal service on the person sued, or by leaving a copy at the registered office of the society or any place of business of the society within the jurisdiction; if the office or place of business be closed, by affixing a copy to the outer door thereof.

Provision is made by the Friendly Societies Act, 1896, *for the settlement of practically all disputes arising within the society itself,* e.g. *in the case of a dispute between a society and a member. If the dispute is one between the society and such member in his capacity as member, the Act applies, but if the relationship is different,* e.g. *the member were an ordinary trade creditor, the ordinary legal remedies are applicable (Mulkern,* 4 *Ap. Ca.* 182). *Where, also, the substance of the question is whether*

the litigant has or has not the rights of a member, the jurisdiction of the Courts is not ousted (*see Symington*, 21 *R.* 371; *Palliser*, [1897] *L. R.* 1 *Q. B.* 257).

(1) Petition by Expelled Member for Reinstatement.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D., E. F., and G. H., trustees of the X. Y. Friendly Society, and as such trustees representing the said Society, *Defenders*.

The demand of the pursuer is—

For his reinstatement as a member of the X. Y. Friendly Society.

Therefore the pursuer craves the Court—

To find and declare that the pursuer has not been legally and validly expelled from the said X. Y. Society, but that he is still a member of the said society, and entitled to all the rights and privileges attaching to such membership: To ordain the defenders to restore the pursuer's name to the roll of members of the said society; and to find the defenders liable in expenses.

Condescendence.

1. The pursuer is a , and resides at . The defenders are the trustees of the X. Y. Friendly Society, and as such are appointed by the said society to pursue and defend actions on their behalf.

2. On or about the pursuer joined the said X. Y. Friendly Society. Since the said date he has regularly paid all subscriptions and contributions exigible from him, and has conformed in all respects to the rules of the said society.

3. [*Narrate quarrel between pursuer and society.*]

4. [*Narrate resolution expelling pursuer, application for reinstatement, and refusal of society to reinstate pursuer.*]

Pleas in Law.

1. The pursuer, being a member of the X. Y. Society, is entitled to enjoy all the rights and privileges of such membership.

2. The actings of the said X. Y. Society in expelling the pursuer being illegal and unwarrantable, decree should be pronounced in terms of the prayer of the petition.

(2) By Member for Payment of Benefit where no Decision has been given under Reference within Forty Days after Application.

If no decision is given on a dispute within forty days after application to the society for a reference under its rules, the claimant may then have recourse to the Sheriff Court in the ordinary way.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D., &c., trustees of the X. Y. Friendly Society, and as such trustees representing the said Society, *Defenders.*

The claim of the pursuer is—

For payment, out of the funds of said society, of £ , with interest and expenses.

Therefore the pursuer craves the Court—

To grant a decree against the defenders, as trustees foresaid, for payment to the pursuer, out of the funds of the said X. Y. Friendly Society, of £ , with interest from until payment; with expenses.

Condescendence.

1. The pursuer is [*designation*]. The defenders are the trustees of the said X. Y. Friendly Society, and as such are authorised to pursue and defend actions on behalf of the said society.

2. On or about the pursuer A. B. joined the X. Y. Friendly Society, and regularly paid all subscriptions and contributions exigible from him.

3. [*Narrate circumstances in which dispute arose.*]

4. [*Narrate application for reference under the rules, and failure to give decision within forty days thereof.*]

Pleas in Law.

1. The defenders, as trustees foresaid, being justly indebted and resting-owing the sum sued for, decree should be pronounced therefor, with interest and expenses, as concluded for.

2. The said X. Y. Society having failed to procure a decision of the dispute between pursuer and them within forty days of the pursuer's application to them, the dispute now falls to be settled in the present action.

Furthcoming, Actions of.

NOTE.—*The purpose of the action of furthcoming is to render arrestments effectual, and to transfer the property arrested to the creditor. "Every species of moveable property may be validly arrested, provided the diligence can be effectually worked out" (Lucas's Trs.,* 21 *R.* 1096, *per Lord Kinnear, at p.* 1101). *Accordingly, in every case where any special procedure is necessary to transfer the arrested subject to the arrester, care must be taken to frame the conclusions so as to cover the required remedy and to indicate the mode by which the diligence is to be worked out. An action of furthcoming is competent even when the arrested fund is not payable by the arrestee until a future event,* e.g. *the death of a liferenter (Jameson,* 14 *R.* 643). *The parties called as defenders are the arrestee and the common or principal debtor. Care must be taken in designing the arrestee that the action is raised against him in the character in which he owes the arrested funds. His designation as an individual should always be given, and if he owes the fund in any other character, that should also be stated. When the arrestment has been loosed on caution, the furthcoming is brought against the cautioner. The arrestee and the principal debtor may also be called as defenders, but petitory conclusions against the arrestee are unnecessary. The expenses of the furthcoming may now be obtained out of the funds arrested, and the expenses of the furthcoming and of the arrestment, if the latter was used in execution, may be concluded for in the summons of furthcoming.*

The action is brought in the Court to whose jurisdiction the arrestee is subject, or in which the fund in medio *is situated, even though the principal debtor may not reside within such jurisdiction. Where the sum sought to be recovered by the furthcoming is under* £20, *recourse may be had to the summary procedure provided by the Small Debts Act,* 1837, *sec.* 9. *For form of complaint, see Small Debts Act,* 1837, *Sched. D.*

1. Arrested Money.

Sheriffdom of shire at .

A. [*designation*], *Pursuer*,

against

B., writer, Edinburgh, as sole surviving trustee for the deceased Z., acting under his trust-disposition and settlement, dated , and recorded , arrestee, and C. [*designation*], principal debtor, *Defenders.* [*Where the arrestment has been loosed on caution, the instance is*—" against D. [*designation*], cautioner, B. [*designation*], arrestee, for his interest, and C. [*designation*], principal debtor, *Defenders.*"]

The claim of the pursuer is—

For payment by the defender B. [*or* the said D.] out of the sum of £100, due by the said arrestee to the common debtor, and arrested by the pursuer on [*if loosed on caution, add:* And uplifted by the said C. on caution for payment thereof being found by the said D.], (1) £50, with interest from till payment; (2) £12, 15s. as taxed expenses, and 5s., respectively due to the pursuer by the common debtor, conform to decree of this Court of date ; and (3) the expenses of this process.

Therefore the pursuer craves the Court—

To grant a decree against the defender B. [*or* the said D.] for payment to the pursuer of (1) £50 with interest from , (2) £12, 15s., (3) 5s., and (4) the expenses of this process as the same may be taxed.

CONDESCENDENCE.

1. On the day of , in an action by the pursuer against the defender C., the Sheriff of , at , found the said C. liable to the pursuer in the principal sum of £50 sterling, with interest thereon at the rate of per cent. per annum from the day of until payment, together with the sum of £12, 15s. sterling, being the taxed amount of the expenses of process, and decerned and ordained instant execution by arrestment, all conform to extract decree herewith produced.

2. By virtue of the warrant contained in the summons on which said decree was obtained [*if the arrestment has been used in execution, say,* "by authority of said decree"], the pursuer, on the day of , executed arrestments in the hands of the said B. for the sum of £ sterling, less or more, due and addebted by the said B. to the said C., conform to execution of arrestment herewith produced.

3. The sums contained in the said extract decree are still due and resting-owing by the said C. to the pursuer, and as he refuses or delays to make payment of the same, the present action has been rendered necessary.

PLEA IN LAW.

The pursuer having used arrestments in the hands of the arrestee of the sums owing by him to the principal debtor, and being entitled to have the same made furthcoming so far as necessary in satisfaction of his debt, to the extent due by the arrestee to the principal debtor, decree should be pronounced as craved.

ALTERNATIVE CONDESCENDENCE.

[*Where the arrestment has been loosed on caution.*]

1 and 2. [*As in preceding style.*]

3. The said D. became cautioner for loosing the arrestment used in the hands of the said B., conform to bond of caution, dated , whereon a precept of loosing arrestment was duly issued by the clerk of Court. The sum arrested was thereupon uplifted by the principal debtor, which sum so arrested and uplifted amounted to £ sterling.

4. The sums contained in the said extract decree are still due and resting-owing to the pursuer, and the said D., as cautioner aforesaid, has been applied to for payment of the same, but he refuses or delays to make payment thereof, and the present action has been rendered necessary.

PLEA IN LAW.

The pursuer having used arrestments in the hands of the said B. of the sums owing by him to the said C., and being entitled to have the same made furthcoming so far as necessary in satisfaction of his debt, and the said D. having bound himself as cautioner for loosing said arrestments, decree should be pronounced, as craved.

2. Arrested Goods.

Sheriffdom of shire at .

A. [*designation*], *Pursuer*,

against

B. [*designation*], arrestee, and C. [*designation*], principal debtor, *Defenders.*

The claim of the pursuer is—

For payment of (1) £50 with interest from till payment; (2) £12, 15s.; and (3) 5s. respectively due by defender C. to pursuer, conform to decree by the Sheriff of at [*or* of this Court], dated , out of goods and effects belonging to the said C., and arrested by pursuer on , in the hands of defender B.

Therefore the pursuer craves the Court—

To ordain the said B. to deliver to the pursuer, or to such person as the Court shall appoint, all moveable goods and effects, the property of or owing by him to the said C., and arrested in his hands at the instance of the pursuer on : To grant

warrant to such person as the Court shall appoint, to inventory, value, and—after due advertisement—to sell by public auction the said goods and effects, or so much thereof as will satisfy and pay—(1) The expenses of and incident to the said sale; (2) the sums of £50 sterling, with interest from the day of until payment; (3) £12, 15s. and 5s. respectively due by the said C. to the pursuer, conform to decree by the Sheriff of at [*or* of this Court], dated ; and (4) the expenses of this process as the same may be taxed, and to pay said sums to the pursuer and consign the balance, if any, in the hands of the Clerk of Court; and in any event to find the said B. and C. liable in expenses.

CONDESCENDENCE.

1. [*As in preceding style.*]

2. By virtue of the warrant contained in the summons on which said decree was obtained, the pursuer, on the day of , arrested in the hands of the said B. the whole moveable goods and effects, the property of or owing by him to the said C., conform to execution of arrestment herewith produced.

3. The sums contained in the said extract decree are still due and resting-owing by the said C. to the pursuer, and as he refuses or delays to make payment of the same, the present action has been rendered necessary.

PLEA IN LAW.

The pursuer having used arrestments in the hands of the arrestee of the whole moveable goods and effects in his possession, the property of or owing by him to the principal debtor, and being entitled to have the same made furthcoming and realised so far as necessary in satisfaction of his debt, decree should be pronounced, with expenses, as craved.

3. Arrested Ship—Action of Sale.

The action is brought in the Court of the county either where the owner is domiciled or where the arrested ship is lying.

Another form of this petition will be found under "SHIPPING."

Sheriffdom of shire at

A. [*designation*], *Pursuer,*

against

B. [*designation*], owner of the ship or vessel , now lying in the harbour of , *Defender.*

The claim of the pursuer is—

For payment by the defender of—(1) £50, &c. [*as in preceding form*], out of the proceeds of the sale of the said ship.

Therefore the pursuer craves the Court—[*if conclusion for constitution of the debt is to be inserted, say*—To grant a decree against the defender for payment to the pursuer of £] To grant warrant to such person as the Court may appoint to sell by public roup the said ship or vessel , now lying arrested in the harbour of , with her boats, furniture, apparelling, and appurtenances, and to ordain said person to pay the proceeds of the sale to the pursuer, or at least so much thereof as will satisfy and pay to him—(1) The expenses of and incident to the said sale; and (2) the sums of £50, &c. [*as in preceding form*] [*if the debt has not been constituted, the conclusion will be*—"(2) the sums sued for in the present action"]; and to consign the balance, if any, in the hands of the Clerk of Court; and in any event to find the defender liable in expenses [*when the arrestment has been used in execution, add:* "as also in the expenses of raising and executing the said arrestment"].

Condescendence.

1. [*If the debt has been constituted, state the fact and date of decree, &c., as in style No.* 1, *Cond.* 1. *If the debt has not been constituted, condescend upon the grounds of claim as in an ordinary action.*]

2. By virtue of the warrant [*state authority for arrestment*], the pursuer caused , an officer of Court, upon the day of , to fence and arrest the said ship or vessel, with her boats, furniture, apparelling, and appurtenances, then and still lying in the harbour of , conform to execution of arrestment herewith produced.

3. The sums contained in the said extract decree [*or* the sums concluded for in the present action] are still due and resting-owing by the defender to the pursuer, and as he refuses or delays to make payment of the same, the present action has been rendered necessary.

Plea in Law.

[*When debt has been constituted.*]

The pursuer having arrested the said vessel, and being entitled to have the same sold and the price thereof made furthcoming so far as necessary in satisfaction of his debt, decree should be pronounced as craved.

PLEA IN LAW.

[*When debt has not been constituted.*]

The sum sued for being due and resting-owing by the defender to the pursuer, and the pursuer having arrested the said vessel, and being entitled to have the same sold and the price thereof made furthcoming so far as necessary in satisfaction of his debt, decree should be pronounced as craved.

Gables.

NOTE.—*The law as to mutual gables, especially those between flatted houses, is in an eminently unsatisfactory position, the authorities differing even as to how far the right of the owners is one of common property or common interest. This makes it essential that in actions as to such buildings, every person who can pretend an interest should be called as defender.*

1. For Inspection and Repair of Gable.

The object of this petition may often, especially in the larger towns, be attained by calling the attention of the municipal officials to the condition of the gable. Under their local Acts these officials have frequently the most extensive powers of ordering repairs, and are usually very willing to exercise them.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D., E. F., and G. H. [*designations*], *Defenders.*

The demand of the pursuer is—

For warrant to repair the mutual gable between pursuer's and defenders' properties at Street , and for payment by the defenders of one-half the cost thereof.

Therefore the pursuer craves the Court—

To remit to such person of skill as the Court shall appoint to inspect and report as to the condition of the mutual gable between the pursuer's property, No. Street, , and the property belonging to the defenders, No. , Street, , and the extent of the repairs required upon the said gable and the cost of the said repairs; thereafter to grant warrant to the pursuer to execute the said repairs upon the said gable and to do all operations necessary for that purpose, all at the sight and to the satisfaction of the said person of skill; and on the cost of the said repairs and necessary operations being

ascertained, to ordain the defenders, in such proportions as to the Court may seem just, to pay to the pursuer the one-half of the said cost and of the reporter's fee; and to find the defenders liable in expenses.

CONDESCENDENCE.

1. The pursuer is proprietor of the tenement, No. Street, . The defenders, the said C. D., E. F., and G. H., are respectively the proprietors of the ground, first, and second or top flats of the tenement, No. Street, immediately adjoining the pursuer's said property.

2. The gable between the said two tenements is very much out of repair. In particular [*state in detail the defects requiring to be remedied*].

3. The said gable is a mutual gable, and in terms of the titles to the said property the defenders are liable to pay to the pursuer one-half of the cost of keeping it in repair. [*It is generally desirable to quote the exact terms of the obligation as to erecting and keeping in repair the mutual gable.*]

4. The pursuer applied to the defenders, by letter dated 19 , desiring them to concur with him in having the said gable put into a proper state of repair. The defenders, however, decline to agree to the pursuer's proposal, being, it is understood, unable to agree among themselves as to their respective proportions of the cost of such repairs. In these circumstances the present action has been rendered necessary.

PLEAS IN LAW.

1. The said gable being mutual to the pursuer and defenders, and requiring to be repaired, and the defenders having refused to concur in having it repaired, the pursuer is entitled to have it inspected and to warrant for its repair as craved.

2. The said gable being mutual to the pursuer and defenders, the pursuer is entitled to be relieved of one-half of the cost of all necessary repairs thereon.

2. For Inspection and Repair or Rebuilding of Gable.

[*This will be similar to the preceding, save the crave and plea in law, which will be as follows:*—]

To remit to a person of skill to be appointed by the Court to inspect and report as to the condition of the mutual gable between the property of the pursuer, at No. Place, , and the property of the defender, at No. in said street, whether it can be repaired or whether it must be rebuilt, and the cost

of such repairs or rebuilding; thereafter to grant warrant to the pursuer to repair, or otherwise to take down and rebuild the said mutual gable, and to do all operations necessary for that purpose at the sight of the said person of skill; and on the said repairs or rebuilding and other necessary operations being completed, and the cost thereof ascertained, to grant a decree against the defender for payment to the pursuer of the one-half of said cost; and to find the defender liable in expenses.

PLEAS IN LAW.

1. The said mutual gable being in a ruinous and dangerous condition, the pursuer is entitled to have the same inspected and repaired or rebuilt, as craved.

2. The said gable being mutual to the pursuer and defender, the defender is liable in one-half of the cost of repairing or rebuilding the same.

3. For Payment of Half Cost of Gable.

NOTE.—*The claim for this may arise in two different sets of circumstances—*

1. *There may be a condition in the titles requiring the feuar of an adjoining stance to repay the half of the value of the mutual gable. In this case the claim will usually emerge whenever the adjoining stance is feued, and the clause in the charter should be quoted in the Condescendence.*

2. *While the titles may contain no such provision as indicated, a feuar is entitled, wherever a row of continuous houses is contemplated, to build his gable one-half on the adjoining vacant stance. In this case the right to repayment from the feuar of the vacant stance does not arise until he makes some substantial use of the gable, and he may, by making no use of it, evade payment altogether* (*Sinclair*, 10 *R.* 45). *The right to payment and duty to pay run with the lands, and so pass to and against singular successors* (*Law*, 18 *D.* 125), *unless excepted in express terms* (*Baird*, 25 *R.* (*H. L.*) 35).

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender of £ , with interest and expenses.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ sterling, with interest from [*date when the defender acquired the feu or date when he first made use of the gable, or* from the date of citation] until payment, and expenses.

CONDESCENDENCE.

1. The pursuer is proprietor of the self-contained dwelling-house, No. Road, , under [*describe the deed under which the pursuer's house is held, giving names of granter and grantee, day and date of recording*].

[*If the claim is based on the terms of the titles, insert condescendence giving the clause or clauses founded on.*]

2. The gable of the pursuer's house is built half on pursuer's feu and half on the adjoining feu to the north. Some time ago the said adjoining feu was acquired by the defender, and on or about 19 he commenced the erection of a self-contained house thereon, and in course thereof has made use of the said gable belonging to the pursuer.

3. The pursuer has repeatedly applied to the defender for payment of the one-half of the expense of the said gable, which amounts to £ , per schedule of measurement, prepared by Messrs. , surveyors, , herewith produced, and a copy of which has been sent to the defender. The defender, however, declines either to make payment of the said sum or state any reason for his refusal to do so. The present action has therefore been rendered necessary.

PLEA IN LAW.

The said gable being mutual to the feus of the pursuer and defender, and the defender having made use thereof, the pursuer is entitled to decree against the defender for one-half of the expense thereof, with interest and expenses, as craved.

4. Interdict against Operations on Mutual Gable.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For interdict against defender's altering or interfering with the mutual gable between pursuer's and defender's houses in

Street , and for a decree ordaining defender to restore said gable to the condition in which it existed prior to his interference.

Therefore the pursuer craves the Court—

To interdict the defender from altering or interfering with the mutual gable between the pursuer's house, No. Street, , and defender's house, No. in said street: To ordain the defender to restore the said mutual gable to the condition in which it was before the defender's interference therewith; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is proprietor of the self-contained house, No. Street, , and the defender is proprietor of the self-contained house, No. , immediately adjoining thereto. The gable between the said two houses is a mutual gable.

2. In the course of certain alterations which the defender is at present making on his said house, he has cut out two recesses for presses in the said mutual gable. The said recesses extend through almost the whole thickness of the gable, and are a wholly unwarranted encroachment on the pursuer's rights therein.

3. The pursuer has required the defender to desist from his operations on the said gable and to restore it to its former condition, but this the defender declines to do, and the present action is thus rendered necessary.

PLEA IN LAW.

The said gable being mutual to the pursuer's and defender's property, the pursuer is entitled to interdict against the defender interfering therewith, and to decree of removal and restoration, as craved.

Goods Purchased, Delivery of.—*See* DELIVERY, Nos. 1-3.

Goodwill.—*See* PARTNERSHIP.

Grace, Act of, for Aliment under.

NOTE.—*Such applications are in one or two cases still competent. See Green's Encyclopædia, vol. i. p.* 96. *The application is competent to the*

Sheriff of the county or Sheriff-Substitute of the district, or the magistrates of the royal burgh where the prison is situated.

Sheriffdom of at .

A., sometime residing at Street, , and presently a prisoner in the prison of , *Pursuer,*

against

B. [*designation*], *Defender.*

The demand of the pursuer is—

For aliment under the Act of Grace.

Therefore the pursuer craves the Court—

To find the pursuer entitled to the benefit of the Act 1696, c. 32, entituled "An Act for the Benefit of Poor Prisoners," and to modify such aliment to be paid to him by the defender as to the Court shall seem just.

CONDESCENDENCE.

1. On or about the pursuer was committed to prison at the instance of the defender for failure to satisfy a decree of the Sheriff of at , ordaining him to make payment to the defender of the sum of £ . He is now confined under said decree in the prison of .

2. The pursuer is quite unable to pay the sums contained in said decree, or to maintain himself in prison.

PLEA IN LAW.

The pursuer being unable to pay the sums contained in said decree, or to maintain himself, the defender ought to be ordained to maintain him.

Ground Annuals.

1. For Payment of Ground Annual.

Sheriffdom of at .

A. B. [*designation*], *Pursuer,*

against

C. D. [*designation*], *Defender.*

The claim of the pursuer is—

For payment by the defender of (1) £50, with interest from Whitsunday 19 ; and (2) the like sum half-yearly at Whitsunday

and Martinmas thereafter, with interest on each term's payment from the date when it becomes due till payment.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of (1) £50, with interest thereon from the term of Whitsunday 19 till payment; and (2) the like sum of £50 half-yearly at each term of Whitsunday and Martinmas thereafter, with interest on each term's payment from the time when it becomes due till paid; and with expenses.

CONDESCENDENCE.

1. Under contract of ground annual between the pursuer and defender, dated 10th, and recorded in the Division of the General Register of Sasines for the 12th 19 , the defender is bound to pay to the pursuer at each half-yearly term of Whitsunday and Martinmas the sum of £50 sterling in name of ground annual for the subjects described in the said contract, and now forming No. Road, .

2. The defender has failed, notwithstanding repeated applications, to pay to the pursuer the sum of £50 due by him at Whitsunday 19 , and the present action has thus been rendered necessary. The defender will be due to the pursuer at the ensuing term of Martinmas, and at each half-yearly term thereafter, a similar sum of £50.

PLEA IN LAW.

The pursuer being entitled, under the contract libelled, to payment from the defender of the ground annual therein specified, decree should be pronounced as craved.

2. Maills and Duties for Ground Annual.

NOTE.—*Unlike a superior, the holder of a ground annual cannot (unless there be express clauses to that effect) raise an irritancy. He can, however, bring an action of maills and duties, which a superior cannot do. As the Heritable Securities Act*, 1894, *does not apply to contracts of ground annual, it will be necessary to call the tenants as parties.*

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], proprietor of the subjects Nos. 15 and 16 Street, , and R. S. and M. T. [*designations*], tenants of the said subjects, *Defenders*.

The claim of the pursuer is—

For payment by the defenders R. S. and M. T. of the rents, maills, and duties of said subjects due by them to defender C. D., but due and payable to pursuer under a contract of ground annual between C. D. and him.

Therefore the pursuer craves the Court—

To grant a decree against the defenders R. S. and M. T. for payment to the pursuer of the rents, maills, and duties of the subjects occupied by them at Nos. 15 and 16 Street, aforesaid, as after mentioned, with interest from the dates at which the said rents and others were or shall become due till payment; or at least so much of the said rents and others as will satisfy and pay to the pursuer—(first) the sum of £ , being the arrears from Martinmas 19 to Martinmas 19 of the ground annual of £ due and payable in terms of the contract of ground annual dated and recorded ; (second) the sum of £ , being the interest due and payable on the said arrears of ground annual; and (third) the sum of £ of ground annual at the term of Martinmas 19 , and the like sum of £ of ground annual at each succeeding term of Martinmas and Whitsunday, with interest and penalties as specified in the said contract of ground annual, superseding always execution against the said R. S. and M. T., defenders, till the terms of payment of their said respective rents shall be first come and bygone: To find the pursuer entitled to the expenses hereof, and of the procedure to follow hereon, out of the readiest of the said rents, maills, and duties; and further, to find the said defenders, R. S. and M. T., in the event of their opposing the conclusions hereof, and the defender C. D. in any event, liable in expenses.

CONDESCENDENCE.

1. By contract of ground annual between the pursuer and the defender, the said C. D., dated and recorded in the Division of the General Register of Sasines for the county of , and as in the Books of Council and Session the , both days of 19 , the pursuer disponed to the said C. D. and his heirs and assignees whomsoever, All and Whole [*describe briefly the subjects as in contract*], under the burdens, conditions, obligations, and irritant and resolutive clause and others therein mentioned, and particularly under the real burden of a ground annual of £ per annum, payable half-yearly at Whitsunday and Martinmas to the pursuer and his heirs

and assignees furth and from the said area of ground; with a fifth part more of penalty in case of failure in the punctual payment of the said ground annual, and the interest of each term's payment at the rate of five per cent. per annum from the date of each term's payment till paid.

2. By the said contract of ground annual, the said C. D. also bound himself and his foresaids to pay to the pursuer, his heirs and assignees whomsoever, the said ground annual, interest, and penalties, and in security of the said personal obligation disponed to the pursuer and his foresaids All and Whole the before-mentioned area of ground, all as the said contract of ground annual, containing an assignation of rents in the pursuer's favour, in itself more fully bears. An extract of the said contract of ground annual is herewith produced and referred to.

3. The said C. D. thereafter erected on the piece of ground conveyed by the said contract the two self-contained dwelling-houses now forming Nos. 15 and 16 Street. The said house No. 15 Street is at present leased from the said C. D. by the defender R. S., at the annual rent of £ , and the said house No. 16 Street by the defender M. T., at the annual rent of £ . The said ground annual has not been allocated between the said two houses.

4. No payment of the said ground annual has been made since the term of Whitsunday 19 , and the defender the said C. D. is now due and owing to the pursuer—(1) The sum of £ , being half-yearly payments of the said ground annual; and (2) the sum of £ , being interest on the said arrears of ground annual at the rate of five per cent. per annum, as stipulated in the said contract of ground annual, all conform to statement herewith produced and referred to.

5. The pursuer has made repeated applications to the said C. D. for payment of the said arrears and interest, but he refuses or delays to make payment thereof, and the present action has thus been rendered necessary.

PLEAS IN LAW.

1. The ground annual and arrears sued for being a real burden on the subjects tenanted by the defenders R. S. and M. T., the pursuer is entitled to decree of maills and duties, as concluded for.

2. The pursuer is, in virtue of the disposition in security and assignation of rents contained in the contract of ground annual libelled, entitled to decree of maills and duties for the ground annual, arrears thereof, interest, and expenses, as craved.

3. For Implement of a Contract of Ground Annual.

(*See* IMPLEMENT, No. 7.)

Guarantee, Payment of.—*See* PAYMENT, No. 11.

Guarantor, By, for Relief against Co-Obligant.—*See* RELIEF.

Guardianship of Infants Act, 1886.

NOTE.—*Under the Guardianship of Infants Act,* 1886, *on the death of the father of a pupil the mother becomes guardian, either alone, if the father has made no appointment, or jointly along with any nominee of the father. If no nomination is made by the father, or all his nominees decline to accept office, then the Court may, in its discretion, appoint a guardian or guardians to act jointly along with the mother.*

The mother may appoint guardians to any pupil to act after the death of herself and the father, and also to act after her death jointly with the father. In the latter case, however, the appointment only takes effect if confirmed by the Court on its being shown to the satisfaction of the Court that the father is unfitted to be sole guardian of his children.

Applications under the Guardianship of Infants Act are competent in the Sheriff Court within whose jurisdiction the respondents or any of them reside. The application may be removed from the Sheriff Court to the Court of Session under the Sheriff Courts Act, 1907, *sec.* 5 (2).

Except in the case of dispute between co-tutors, when the application must be at the instance of a tutor, any person having an interest in the children's welfare has apparently a title to apply to the Court.

1. By Mother for Appointment of Joint Tutors.

Under the Guardianship of Infants Act, 1886.

Sheriffdom of at .

A. B. [*designation*], *Pursuer,*

against

C. B. and D. B. [*designations*], and E. F. and G. H. [*designations*], *Defenders.*

The demand of the pursuer is—

For the appointment of two persons to act along with pursuer as tutors to the defenders C. B. and D. B., children in pupilarity of the deceased K. B. [*designation*].

Therefore the pursuer craves the Court—

To nominate and appoint E. F. [*designation*] and G. H. [*designation*],

and the survivor or such other person or persons as the Court may think proper, to act as tutors of the said C. B. and D. B. jointly with the pursuer: To find the pursuer entitled to expenses out of the estate of the said C. B. and D. B.

CONDESCENDENCE.

1. The pursuer is the widow of the now deceased K. B. [*designation*], who died on , survived by the pursuer and two children, the defenders—C. B., born , and D. B., born . The said C. B. and D. B. are thus both in pupilarity.

2. The whole means and estate of the said deceased K. B. consisted of his interest in the trust estate of his father L. B. [*designation*], under his trust settlement, dated and recorded . . The defenders E. F. and G. H. are the trustees now acting under the said trust-disposition and settlement.

3. By the purpose of the said settlement the said L. B. directed his trustees [*quote provision in favour of K. B.*]. Under said provision £ falls now to be paid to the pursuer as guardian of the said C. B. and D. B.

4. The pursuer is without experience in business matters, and feels unable without assistance to undertake the investment and management of so large a sum. She has accordingly requested the said E. F. and G. H. to act with her as tutors of the said C. B. and D. B., and the said E. F. and G. H. have consented to do so if appointed by the Court.

PLEA IN LAW.

The appointment of joint tutors to act with the pursuer being expedient, decree should be pronounced in terms of the prayer of the petition.

2. By Tutor Appointed by Mother for Confirmation as Co-Tutor with Father.

Sheriffdom of at .

T. G. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For confirmation of the appointment of pursuer as tutor jointly with defender of defender's pupil child, E. D.

Therefore the pursuer craves the Court—

To confirm the appointment of the pursuer as tutor jointly with the defender of the defender's pupil child, E. D., with all the powers incident to the office: To ordain the defender—(1) to send the said E. D. to live with the pursuer during the period from to in each year, or for such other period as the Court shall appoint; (2) to make payment to the pursuer of the sum of £ monthly and in advance while the said E. D. shall reside with the pursuer, with interest at the rate of five per centum per annum on each month's payment from the date when the same falls due until payment; with expenses in the event of the defender offering opposition hereto.

Condescendence.

1. The defender and the now deceased F. G. or D. were married at on . There is one child of the said marriage, viz. E. D., who was born on , and is now years of age.

2. The said F. G. or D. died on or about . By deed of nomination, dated , the said F. G. or D. nominated and appointed the pursuer, her brother, to be tutor, along with the defender, of the said E. D. The pursuer has accepted the said nomination, and is desirous of discharging his duties as tutor [*state the pursuer's position, &c., showing that he will be a desirable guardian*].

3. The defender is unfit to be the sole guardian of the said E. D. [*set out specially grounds of unfitness*].

4. The pursuer desires that the said E. D. should reside with him for at least in each year. £ per month is a suitable amount for the board of the said E. D. during his residence with the pursuer.

5. This application is made in terms of sec. 3 of the Guardianship of Infants Act, 1886.

Pleas in Law.

1. The said F. G. or D. having nominated the pursuer to act as tutor of the said E. D. along with the defender, and the defender being unfit to be sole tutor, the pursuer's appointment should be confirmed, as craved.

2. The pursuer is entitled to be paid such sums as are necessary for the maintenance of the said E. D. during his residence with the pursuer.

3. To Settle Dispute between Co-Tutors.

Sheriffdom of at .

D. B. [*designation*], *Pursuer*,
against
R. F. [*designation*], *Defender*.

The demand of the pursuer is—

For settlement of the dispute between pursuer and defender, as tutors of E. D., pupil child of the deceased C. D. [*designation*], relative to the upbringing of the said child.

Therefore the pursuer craves the Court—

To appoint E. D., the pupil child of the said deceased C. D., to be brought up in the Roman Catholic religion, and to approve of a scheme for that purpose; and to ordain the pursuer and defender, as joint-tutors of the said E. D., to educate and bring up the said E. D. in terms of the said scheme; and to find the pursuer entitled to the expenses of this dispute out of the estate belonging to said child.

CONDESCENDENCE.

1. The pursuer is the brother of the deceased M. B. or D., wife of the said deceased C. D. and mother of the said E. D. The said M. B. or D. died on 19 , leaving a settlement by which *inter alia* she appointed the pursuer tutor to the said E. D.

2. The defender is a lay missionary of the Church of Scotland, and is in no way related either to the said C. D. or M. B. or D. By holograph letter executed by the said C. D. the day before his death, which took place on 19 , he, it is believed, appointed the defender tutor to his child, the said E. D. Copies of the said settlement and holograph letter are herewith produced and referred to.

3. The said M. B. or D. was brought up in, and continued until her death, a member of the Roman Catholic Church. Some time before his marriage, which took place on 19 , the said C. D., who had been brought up in the Protestant faith, was received into the Roman Catholic communion. During the whole of their married life the said C. D. and M. B. or D. attended regularly the services of the Roman Catholic Church. Their only child, the said E. D., was baptized, and the said M. B. or D. was buried, with the rites of the said Church.

4. After his wife's death C. D. fell into irregular habits, but continued to attend the services of the Catholic Church to within a few months of his death. For some time before that event the defender, who was a

neighbour of C. D., had been gradually acquiring considerable influence over him, and ultimately induced him to execute a will leaving £ , nearly one-half of his estate, to Protestant charities, and also to write the said letter appointing the defender tutor to his child. The said letter was, as the pursuer believes and avers, executed by the said C. D. while weak and facile and under the undue influence of the defender.

5. No intimation of C. D.'s death was sent to the pursuer or any other relative, and immediately thereafter the defender placed the said E. D. in the Home, an exclusively Protestant institution. On hearing of his brother-in-law's death, the pursuer called on the defender and asked that the said E. D. should be delivered to him to be brought up either with his own family or in some suitable Catholic home; but this request the defender refused, averring that the said C. D. had before his death been received back into the Protestant Church, and had desired that his child should be brought up in that faith.

6. In these circumstances the pursuer applies to the Court in the exercise of the jurisdiction conferred on it by the Guardianship of Infants Act, 1886, and the Custody of Children Act, 1891, to decide the question of the faith in which the said E. D. is to be brought up.

PLEA IN LAW.

The pursuer being unable to agree with his co-tutor in regard to the upbringing and education of the said E. D., is entitled to apply to the Court for directions thereanent.

Harbour.

NOTE.—*Actions by and against harbour authorities most commonly fall under the Harbours Clauses Act*, 1847, *or under some local Act incorporating that Act, and the provisions of that Act should always be referred to before instituting such an action.*

1. For Damage by Vessel to Quay.

This action is under secs. 74 *and* 75 *of the Harbours Clauses Act*, 1847.

A. B. [*designation*], *Pursuer*,

against

T. P. [*designation*], owner of the tug-boat *X.*, of Aberdeen, now lying in the harbour of M., *Defender.*

The claim of the pursuer is—

For payment by the defender of £ as damages, as condescended on.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation and with expenses: To grant warrant to officers of Court to distrain and keep the said tug-boat *X.*, and any tackle and furniture thereof, until the said sum, or such other sum as may be awarded by the Court, and expenses, has been paid; and if the same be not paid within seven days after such distress or keeping, to grant warrant to the pursuer to sell the said tug-boat, tackle, and furniture, or any part thereof, by public roup, and to apply the proceeds of such sale in payment of the expenses of the said sale and of the said sum of £ or other sum awarded by the Court, and expenses, and all charges incurred by the distress and keeping of the said tug-boat, tackle, and furniture, and to consign any balance remaining in the hands of the Clerk of Court.

Condescendence.

1. The pursuer is the proprietor of the harbour of M., and under and in virtue of the Act [*special Act authorising erection or improvement of harbour*] is the "undertaker" within the meaning of the Harbours, Docks, and Piers Clauses Act, 1847. The defender is the owner of the steam-tug *X.*, of Aberdeen, now lying in the harbour of M.

2. The *X.* arrived in the harbour of M. on the evening of the [*date*], and was moored [*describe position*]. The hawsers used for mooring the said vessel were old and quite insufficient for the purpose, and in consequence thereof during the night of the [*date*] she broke away, drifted across the harbour, and [*describe damage done in detail*].

3. The pursuer has had the said damage inspected by Mr. D. F., civil engineer, M., who estimates the cost of repairing the same at £ , being the sum sued for. The defender has been applied to for payment of that amount, but he refuses or delays to pay the same, and this action is therefore necessary.

Pleas in Law.

1. The pursuer's harbour having sustained damage to the extent specified through the fault of the defender or of those for whom he is responsible, decree should be granted, as craved, with expenses.

2. In virtue of the statutes condescended on, the pursuer is entitled, in the event of the defender failing to pay the amount awarded by the Court, to warrant of distraint and sale, as concluded for.

2. By Owner of Vessel for Damage through Faulty State of Harbour.

A. B. [*designation*], owner and master of the steamship *X.*, of M., *Pursuer*,

against

The Provost, Magistrates, and Councillors of the burgh of Y., *Defenders.*

The claim of the pursuer is—

For payment by the defenders of £ as damages, as condescended on.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and with expenses.

CONDESCENDENCE.

1. The pursuer is owner and master of the steamship *X.*, of M., of tons registered tonnage. The defenders are the magistrates and council of the burgh of Y., and as such are the proprietors of the harbour of Y.

2. The pursuer's said steamship arrived at Y. about [*time*] on the 19 . The tide was at the time [*give state of tide*]. When the *X.* got near the entrance to the harbour, L. M., the defenders' harbourmaster, who was standing on the pier-head, directed [*state the orders given, and that the said orders were obeyed*]. Immediately thereafter the *X.* ran aground on a bank of sand on the north side of the channel near the pier-head, and sustained serious injuries.

3. The said bank was not marked, and constituted a serious danger to navigation at the entrance to said harbour, especially at certain states of the tide, and to vessels of the size of the *X.* The defenders were well aware of the existence of the said sandbank, and that vessels had previously grounded thereon in entering the harbour, and it was their duty as proprietors of the said harbour to maintain it in an efficient state. They, however, failed to do so, and made no attempt, by dredging or otherwise, to remove the sandbank.

4. Further, when the *X.* grounded on the said bank, she was under and in course of obeying the orders of the harbourmaster, the said L. M., for whom the defenders are responsible. The grounding, so far as not caused by the existence and dangerous position of the said sandbank, was the result of the negligent or unskilful orders given by the defenders' said harbourmaster.

5. As a result of the said grounding, the *X.* was [*narrate injuries*], and had to be repaired at an expense of £ . The pursuer has applied to the defenders for payment of the said damage sustained by him through their fault, but they deny any liability therefor.

PLEA IN LAW.

The pursuer, having suffered loss and damage to the extent sued for through the fault of the defenders or of those for whom they are responsible, is entitled to decree, with expenses, as craved.

Hereditas Jacens.—*See* CONSTITUTION AND ADJUDICATION.

Heritable Creditor, for Accounting against.—*See* ACCOUNTING, No. 8.

Heritable Property.—*See* IMPLEMENT, No. 1; DIVISION.

Heritable Securities Act, 1894.—*See also* EJECTION, No. 4.

NOTE.—*The Heritable Securities Act*, 1894, *sec.* 16, *makes provision for three cases*—(a) *where the debtor in an heritable security has died and no heritable title has been completed by his heir or other representative, and the name and address of such heir cannot be ascertained by the creditor;* (b) *where the creditor cannot ascertain the address of the debtor in the security, or whether such debtor is alive; and* (c) *where the creditor cannot ascertain the address of the person who, in terms of such heritable security, is the person legally entitled to receive intimation of the demand of payment. In each of these cases the creditor may apply to the Sheriff of the county in which any part of the security subjects is situated, for warrant to intimate the demand of payment edictally. It does not appear necessary to call anyone as defender in such cases, except in the second. In this case the creditor, if he knows the name and address of the heir of the debtor, should call him as a defender.*

1. To Cite Edictally Persons Entitled to Notice of Demand for Payment.

Sheriffdom of at

A. [*designation*], *Pursuer.*

The demand of the pursuer is—

For warrant to cite edictally the heirs and representatives of B.

[*designation*], the debtor in a bond and disposition in security, dated in favour of pursuer, for £ .

Therefore the pursuer craves the Court—

To grant warrant to the pursuer, as the creditor now in right of a bond and disposition in security for the sum of £ sterling, granted by B. [*designation*], in favour of the pursuer, dated and recorded , to intimate the demand of payment specified in sec. 119 of the Titles to Land Consolidation (Scotland) Act, 1868, by delivery at the office of the keeper of the Record of Edictal Citations, within the General Register House, Edinburgh, of a schedule of intimation, requisition, and protest for and on behalf of the pursuer, addressed to the heirs and representatives of B. [*designation*], or in such other form and addressed to such person or persons, by name or in his or their representative character, as the Court may prescribe, after such inquiry, if any, as the Court may think fit.

CONDESCENDENCE.

1. The petitioner is the creditor now in right of a bond and disposition in security for the sum of £ sterling, granted by the said B. in favour of the petitioner, dated and recorded . The subjects embraced in said bond and disposition in security consist of [*short description of subjects*]. The said bond and disposition in security is produced herewith.

2. [*Narrate circumstances which have rendered application necessary, e.g.* that debtor has died intestate, that no title has been completed by his heir, and that he cannot ascertain the name and address of the heir.]

3. The pursuer is now desirous of intimating a demand for payment of the sums contained in said bond and disposition in security, and he makes the present application in terms of sec. 16 of the Heritable Securities (Scotland) Act, 1894.

PLEA IN LAW.

The debtor in said bond and disposition in security being dead, and no title having been completed to the security lands by his heir or other representative, and the pursuer being unable to ascertain the name of such heir, warrant ought to be granted as craved.

2. To Acquire Absolute Property.

The Heritable Securities (Scotland) Act, 1894, *introduced into the law of Scotland a procedure analogous to the English foreclosure, by which the*

holder of a bond and disposition in security may, on default in payment, become the absolute proprietor of the security subjects.

The procedure is by petition to the Sheriff of the county in which the subjects are situated, craving the Sheriff to grant a decree in terms of Schedule (D) annexed to the Act. Before the creditor is entitled to present such a petition, he must have exposed the subjects for sale at a price not exceeding the amount due under his security, and any prior or pari passu *securities, exclusive of the expenses of the exposure.*

It has been held in some Sheriff Courts that there must have been six weeks' advertisement at an upset price not exceeding the amount of the debt, &c.

The Sheriff has a discretion either to grant decree or to order the subjects to be re-exposed at an upset price fixed by him. If he takes this latter alternative, the petitioning creditor is entitled to purchase the subjects at the sale.

Where decree is granted, the creditor's title is completed by recording an extract of the decree in the appropriate Register of Sasines. The extract must be stamped with conveyance on sale duty (*Inland Revenue* v. *Tod*, 25 *R.* (*H. L.*) 29).

Sheriffdom of at .

A. [*designation*], *Pursuer*,

against

B. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator that defender has forfeited his right of redemption of the lands after described, and that pursuer is now vested in said lands as absolute proprietor.

Therefore the pursuer craves the Court—

To find and declare, in terms of sec. 8 of the Heritable Securities (Scotland) Act, 1894, that the defender has forfeited the right of redemption reserved to him in the bond and disposition in security for £ sterling, granted by him in favour of the pursuer, dated , and recorded in the Division of the General Register of Sasines applicable to the county of on ; that the said right of redemption is extinguished as from and after the date of the decree to follow hereon; and that the pursuer is vested in, as absolute proprietor thereof, the subjects described in and conveyed in security by the said bond and disposition in security, viz.: All and Whole [*insert description as in bond, and refer to burdens, &c., as therein specified or referred to*], and that at the price of £ sterling [*insert*

upset price at which subjects were last exposed]: To direct that the expenses incurred and to be incurred by the pursuer in connection with this application and the proceedings to follow hereon be treated as expenses of sale, and to decern: To grant warrant to record an extract of the decree to follow hereon in the said Division of the General Register of Sasines; and to find the defender, in the event of his appearing and offering opposition hereto, liable in expenses.

CONDESCENDENCE.

1. The pursuer is the holder of a bond and disposition in security for £ sterling, granted by the defender in his favour, dated , and recorded in the Division of the General Register of Sasines applicable to the county of on . Interest on the said bond is due from . The said bond is produced herewith.

2. The security subjects contained in said bond consist of [*short description*]. There is produced herewith an advertisement of the said subjects which gives details thereof.

3. So far as known to the pursuer, there is no other debt than the said bond secured on the said subjects.

4. The pursuer called up the said bond on , on which date the requisite statutory notice was served upon the defender. A copy of the schedule of intimation, requisition, and protest, with notarial certificate annexed, is produced herewith.

5. Payment not having been made, the said subjects were duly advertised for sale in the newspaper, conform to certificate produced herewith.

6. The said subjects were exposed for sale within on 19 , at the upset price of £ sterling. The said upset price does not exceed the amount due under the said bond, exclusive of the expenses of the exposure. No offer was made for the said subjects, and the sale was accordingly adjourned. The articles of roup of said subjects, with minute of adjournment annexed, are produced herewith.

7. The pursuer is now desirous of acquiring the absolute property of the said subjects, and he makes the present application in terms of sec. 8 of the Heritable Securities (Scotland) Act, 1894.

PLEA IN LAW.

The pursuer having exposed the subjects contained in the said bond for sale at an upset price not exceeding the amount due thereunder,

exclusive of the expenses of the exposure, and having failed to find a purchaser, decree ought to be pronounced in terms of the prayer of the petition.

NOTE.—*Where there are other creditors, either preferable or postponed to the petitioning creditor, these must be called for their interests. In this case the last upset price must not exceed the amount due to the petitioner, exclusive of the expenses of the sale, plus the amount due to the preferable creditors.*

In this case the crave of the petition is directed against the proprietor of the subjects as in the preceding form, and the part of the crave dealing with the expenses of the petition will run as follows: "And to find any of the defenders appearing and offering opposition hereto liable in expenses."

The condescendence will set forth the debts due to the other creditors, and state whether they are preferred or postponed to that of the petitioning creditor, and will also incorporate a statement showing that the last upset price did not exceed the amount due to the petitioner and the preferable creditors, if any, exclusive of the expenses of the exposure.

The plea will be, "The pursuer having exposed the subjects contained in the said bond for sale at an upset price not exceeding the amount due thereunder and under the preferable securities, exclusive of the expenses of the exposure, and having failed to find a purchaser, decree ought to be pronounced in terms of the prayer of the petition."

When the debtor-proprietor is dead, the petitioner should call as defenders—(1) *the heir-at-law;* (2) *the widow, if he has left a widow; and* (3) *his trustees or executor, according as he died testate or intestate. In these cases the crave of the petition runs,* "To grant decree against the defenders, finding and declaring that they and each of them and the estate and representatives of the said have forfeited," &c.

If the debtor is under sequestration, the petitioner should call both the debtor and his trustee in bankruptcy. If the original debtor has sold the security subjects, he should call both the original debtor and the purchaser. In this case the prayer runs as in the preceding paragraph, omitting "and the estate and representatives of the said ."

3. By Heritable Creditor with Pari passu Ranking, for Power to Sell.

NOTE.—*Under sec.* 11 *of the Heritable Securities Act,* 1894, *a heritable creditor holding a* pari passu *ranking can now obtain warrant to sell the subjects embraced in his security, without previously obtaining the consent of the creditor holding the other* pari passu *security. The method is to apply*

to the Sheriff for warrant to sell, calling such other creditor as defender. The Sheriff, if in his opinion it is reasonable and expedient that such sale should take place, may order a sale of the security subjects; in case of difference in opinion, may fix the price and may authorise either or both of the creditors to carry through the sale, and, upon payment or consignation of the price, to grant a conveyance in favour of the purchaser, and disencumber the lands of the securities. The expenses of and connected with the sale form a first charge on the price realised for the subjects, and the balance, after meeting these expenses, is paid to the security holders, according to their just rights and preferences.

Sheriffdom of at .

A. [*designation*], *Pursuer*,
against
B. [*designation*], *Defender*.

The demand of the pursuer is—

For warrant to sell the subjects after mentioned in virtue of the powers contained in a bond and disposition in security for £ granted by defender in favour of pursuer, and dated .

Therefore the pursuer craves the Court—

To grant warrant, in terms of sec. 11 of the Heritable Securities Act, 1894, to sell All and Whole [*insert description of security subjects*], and to order a sale of the said subjects under the power of sale contained in the bond and disposition in security for the sum of granted by C. [*designation*], in favour of the pursuer, dated , and recorded [*register and date*]: To fix the upset price: To authorise the pursuer to carry through the sale, and, upon payment or consignation of the price, to authorise the pursuer to grant a conveyance in favour of the purchaser, and to disencumber the said subjects of the said bond and disposition in security and the *pari passu* security held by the defender, constituted in his favour by bond and disposition in security for £ , granted by the said C. in favour of the defender, dated , and recorded [*date and register*], and that as if the pursuer and defender were by agreement carrying through such a sale: To fix the time and conditions of sale: To order that the expenses of and connected with the sale shall be payable preferably out of the price, and that the balance of the price, after payment of prior securities, shall be paid to the pursuer and defender in proportion to the amounts due to them respectively under their said *pari passu* securities; and to

decern; and to find the defender liable in expenses in the event of his appearing and opposing this application.

CONDESCENDENCE.

1. The pursuer is the holder of a bond and disposition in security for the sum of £ , granted by the said C. in his favour, dated , and recorded . The defender is the holder of a bond and disposition in security for the sum of £ , granted by the said C. in his favour, dated , and recorded . The subjects conveyed in security by said bonds and dispositions in security are [*set out subjects*]. The said two bonds and dispositions in security are entitled to a *pari passu* ranking on the said subjects.

2. In addition to the said two bonds and dispositions in security, there are the following other securities affecting the said subjects [*set out any other securities there may be*].

3. The pursuer desires to sell the said subjects, but he has been unable to get the consent of the defender to a sale, and he accordingly presents this application under sec. 11 of the Heritable Securities (Scotland) Act, 1894.

PLEA IN LAW.

The pursuer being the holder of a security ranking *pari passu* with the security held by the defender, and being desirous of selling the security subjects but unable to get the defender's consent to a sale, is entitled, in terms of sec. 11 of the Heritable Securities (Scotland) Act, 1894, to decree, as craved.

Hired Property, for Delivery of.—*See* DELIVERY.

Horse, for Repayment of Price of.—*See* RELIEF.

Horse, for Warrant to Sell.—*See* WARRANT.

House.—*See* ACCESS; EJECTION; IMPLEMENT; INSPECTION; LEASE; PLENISH; RELET; REMOVING; and SEQUESTRATION.

House Factor, Accounting against. — *See* ACCOUNTING, No. 6.

Housing of Working Classes Act, 1890.—*See* APPEAL.

Husband and Wife.—*See* ALIMENT; GUARDIANSHIP; DELIVERY, No. 9; DONATION; MARRIED WOMEN'S PROPERTY ACT.

Hypothec.—*See* LEASE; SEQUESTRATION FOR RENT

Illegal Arrest, Damages for. — *See* REPARATION, No. 1 (1).

Illegal Diligence, Damages for.

NOTE.—*As the use of diligence is one of the most public and serious attacks which can be made on a person's credit, the illegal, or rather wrongful, use of it involves all parties concerned in liability for damages. Thus the creditor in whose name it is used, the agent who instructs it, the officer who lays it on, and his cautioner, and even the judge who grants the warrant, may all in various degrees be liable. The creditor is liable in every case, whether for his own fault or the negligence or want of skill of the agent, messenger, or judge. The agent and officer are also liable for their personal negligence or fault, while the judge is only liable in cases of personal diligence, and then only when he has acted maliciously and without probable cause, or in a grossly irregular manner.*

A broad distinction lies between general diligences, which every litigant is entitled to use, such as arrestment, inhibition, and poinding, and special diligences granted on ex parte *statements, such as interdict and sequestration for rent. In actions of damages for wrongful use of the first, malice and want of probable cause must be averred; in the latter class the applicant warrants the accuracy of the statements on the faith of which he gets his warrant, and is liable if they are erroneous.*

1. Against Creditor and Sheriff-Officer and his Cautioner for Damages for Wrongful Use of Arrestment.

Damages for wrongful use of arrestment is not the appropriate remedy where a person to whom the warrant does not apply complains of arrestment (*Massarella*, 5 *S. L. T. No.* 91). *In the case figured it is not necessary to allege malice and want of probable cause* (*Wilson*, 3 *R.* 18).

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], S. F., sheriff-officer, , and R. S. [*designation*], cautioner for and with the said S. F., *Defenders*.

The claim of the pursuer is—

For payment by the defenders, jointly and severally, of £ , as damages for an illegal arrestment of £ in the hands of P. Q. [*designation*], on .

Therefore the pursuer craves the Court—

To grant a decree against the defenders, jointly and severally, for payment to the pursuer of £ , with interest and with expenses.

CONDESCENDENCE.

1. The pursuer is [*designation*]. The defender is [*designation*].

2. On 19 , the defender raised an action for £ in the Sheriff Court of Lanarkshire at Glasgow, against the pursuer, as trustee of the deceased T. B. [*continue description as in summons or decree*].

3. On or about 19 , the defender S. F., on the instructions of the defender C. D., through his law agent, L. A. [*designation*] used arrestment on the dependence of the said action in the hands of P. Q. [*designation*], for the sum of £ , due and addebted by him to "the said A. B." The schedule of arrestment served on the said P. Q. was in the following terms (*quote it*).

4. The said P. Q. was not at the time of said arrestment indebted to the trust estate of the said T. B., or to the pursuer as trustee thereon. He was, however, due to the pursuer, as an individual, a sum of over £ , and this sum was, by the said diligence, unwarrantably and wrongfully arrested by the defender. The pursuer at once applied to the defender C. D. to withdraw the said arrestment, but he has refused to do so.

5. The defender S. F., when he prepared the said schedule of arrestment, was well aware, from the terms of the summons on which the arrestment bore to proceed, that the action was directed against the pursuer solely as trustee of the said T. B., and not as an individual. In using arrestments of the funds due to the pursuer as an individual, the said S. F. was therefore guilty of culpable and reckless negligence. The defender R. S. is the cautioner for the said S. F., and as such is liable for the culpable or negligent performance by the said S. F. of his duties as sheriff-officer.

6. Through the said wrongful arrestment, the pursuer has been deprived of the use of the said sum of £ , and the loss and damage thus occasioned to him is moderately estimated at the sum sued for.

PLEAS IN LAW.

1. The defender C. D. having, without warrant to that effect, arrested funds due to the pursuer as an individual, is liable to the pursuer in damages as craved.

2. The defender S. F. having culpably and negligently, without warrant, arrested funds due to the pursuer as an individual, the said S. F., and R. S., as his cautioner, are jointly and severally liable to the pursuer in damages as concluded for.

2. For Wrongful Sequestration for Rent.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender of £ with interest and expenses, as damages, in respect of his having on wrongfully obtained and executed warrants of sequestration and to carry back pursuer's furniture.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ with interest and expenses.

CONDESCENDENCE.

1. The pursuer is [*designation*]. The defender is [*designation*], and is proprietor of the dwelling-house No. Street, , sometime tenanted by the pursuer.

2. The pursuer was tenant of the defender's said house for years prior to Whitsunday last, at the annual rent of £ , payable half-yearly. During the whole of said period the pursuer paid his rent regularly when due.

3. About a year ago the pursuer acquired a feu at No. Road, , and has erected a house for his own occupation thereon. The defender, who lives in No. Street, next door to the pursuer's then residence, was well aware of this, as the pursuer had frequently spoken to him about it, and asked his advice as to certain matters connected therewith.

4. On 19 the pursuer removed his furniture from No. Street to his new house at Road. The said

removal took place between the hours of and , and the defender was well aware of what was being done.

5. On 19 , the defender, without any warning or making application to the pursuer for payment of the rent in question, raised in the Sheriff Court of at a summons of sequestration for the rent of the said house at Street, due at the ensuing term of Whitsunday, and also obtained warrant to have the pursuer's furniture carried back to the said house. In the said summons the defender averred [*state the averments as to the necessity for the warrants craved*]. The said averments were unfounded and untrue.

6. On 19 , on the instructions of the defender, a sheriff-officer proceeded to the pursuer's house at Road, and commenced to carry back his furniture. The pursuer on being sent for, in order to stop the said proceedings, at once paid the said rent and expenses. The receipt therefor is herewith produced and referred to.

7. The said sequestration and warrant to carry back said furniture were obtained and executed by the defender wrongfully. The pursuer has applied to the defender to repay to him—(1) the expenses paid by him to the sheriff-officer, (2) the cost of removing the furniture carried away by the sheriff-officer, and (3) a sum in reparation of the injury sustained by him through the said wrongful diligence; but the defender refuses to make any payment, and the present action is thus necessary.

PLEA IN LAW.

The defender having wrongfully obtained and executed warrants of sequestration and to carry back the pursuer's furniture, is liable to the pursuer in reparation therefor.

3. For Damages for Illegal Arrestment of Ship.

(*See* ARRESTMENT, No. 7.)

Illegal Practices, Corrupt and.—*See* ELECTIONS.

Illegitimate Child.—*See* ALIMENT; CHILDREN, CUSTODY OF.

Implement, Actions for.

NOTE.—*By an action of implement it is sought to compel the defender to perform the counterpart of a contract, or fulfil some obligation. The pursuer must have an interest to enforce the obligation of defender, and must be ready to implement his own part of the contract. The conclusion*

is to ordain the defender to implement his obligation in terms of the contract, deed, or other obligation founded on. The conclusion must *state what the pursuer requires the defender to do, or in what way the contract or obligation is to be implemented* (*Robertson*, 3 *R.* 21).

If specific implement is practically possible, it may be enforced in Scotland (*contrary to the law of England*) *in all contracts, except a promise of marriage.*

In some cases a conclusion for implement alone is enough, e.g. *to accept title and pay price; but in others it may be a question whether specific implement or damages is the appropriate remedy,* e.g. *where implement has become impossible. In the latter case the conclusion for implement must be, and in the former frequently is, supplemented by alternative conclusions for damages, or for declarator that by failure to implement the contract is no longer binding on pursuer, and for damages.*

The conclusion for expenses may be either absolute or on defender appearing and opposing, as the circumstances may require.

In the condescendence it is best simply to narrate the contract and the refusal or delay to implement, without entering into the defender's objections, as, if the contract is admitted, the objections to implement then become the real question in the case, and, being libelled in the defences, the pursuer may be entitled to insist on defender leading in the proof.

1. By Seller for Implement of a Contract of Sale of Heritage, or for Damages.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender.*

The claim of the pursuer is—

For implement by the defender of a contract of sale, dated , between pursuer and defender for the purchase of a house, No. Street, , at the price of £ , conform to missive of sale herewith produced, with interest from Whitsunday , and failing such implement for payment by the defender of £ as damages.

Therefore the pursuer craves the Court—

To ordain the defender, within such time as the Court may appoint, to implement said contract by paying to the pursuer, in exchange for a valid conveyance of said subjects, £ as the purchase price thereof, with interest from the term of Whitsunday 19 , together with the sum of £ , being defender's

share of the cost of said conveyance; and failing such implement, to find and declare that the pursuer is freed and released from any obligation to implement and fulfil his part of said contract, and is entitled to sell or dispose of the said subjects as he may think proper; and in that event [*or* and in any event] to grant a decree against the defender for payment to the pursuer of £ sterling in name of damages, with interest from the date of citation; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is [*design him*], and the defender is [*design him*].

2. In the beginning of January 19 the pursuer advertised the dwelling-house No. Street, , as for sale, and on February following the pursuer received from the defender the following holograph letter making an offer to purchase said house, viz. [*quote*]. On February 19 the pursuer wrote and posted to the defender an acceptance of his said offer in the following terms [*quote*].

3. A valid and binding contract of sale of said subjects was thus constituted by said missives, which are produced herewith. On April 19 , the pursuer's agent sent the titles of said subjects to defender's agents, and the draft of the conveyance by pursuer was prepared and revised. But although the pursuer has repeatedly offered to execute and deliver the conveyance as revised, and has called upon the defender to accept the same and pay the said price, he refuses or delays to do so, and the present action has been rendered necessary. The pursuer is still ready and willing to implement and fulfil his part of said contract of sale, by executing and delivering a valid disposition of said subjects in favour of the defender.

4. In the event of defender failing to implement his part of said contract of sale, the pursuer will suffer serious loss and damage through loss of market. [*State any special damage, e.g.* The pursuer occupied said dwelling-house previous to Whitsunday 19 , and in reliance upon defender implementing said contract and paying said price on the date when same was due, viz. Whitsunday 19 , the pursuer purchased another house at No. Street, , for his own occupancy.] In consequence of defender's failure to pay said price, the pursuer was not able to provide the necessary funds to pay for the house he had purchased, and has become liable for interest on £ , the purchase price, from Whitsunday 19 till 19 , when he obtained a loan to enable him to complete the purchase. The defender was well aware that pursuer relied on the price to be received from him to carry

out said purchase. The loss and damage which the pursuer has sustained and will sustain will amount to not less than £ , the sum sued for.

PLEAS IN LAW.

1. A valid and binding contract of sale having been constituted between the pursuer and the defender, as condescended on, and the defender having refused or delayed to implement his part thereof, the pursuer, being ready and willing to implement his part thereof, is entitled to decree of implement as craved.

2. The pursuer having suffered loss and damage to the amount sued for in consequence of defender's continued failure to implement said contract, is entitled to decree therefor, with expenses.

3. In the event of the defender failing to implement the said contract, the pursuer is entitled to decree freeing him from all obligations thereunder, and to damages, in terms of the alternative conclusions of the summons.

4. The defender having, in the knowledge that pursuer had contracted with third parties on the faith of his contract with the defender, failed to implement said contract, is liable to the pursuer in all loss thereby occasioned.

[*In the event of damages concluded for being liquidate penalty stipulated in the contract, the plea will be—*

4. The defender having bound himself to implement the said contract under the penalty therein specified, and having, to pursuer's loss and damage, failed to do so, pursuer is entitled to decree for said penalty.]

2. To Purge the Record of Incumbrances.

NOTE.—*The obligation here sought to be enforced is almost invariably granted by an agent, and the action may proceed against him alone.*

The primary obligation, however, to grant a valid title is contained in the contract or missives of sale, and apart altogether from the agent's obligation, the seller for a full price is bound to purge the record of all incumbrances. The agent's obligation to deliver searches is only an additional security to the purchaser to allow the settlement to go through without the actual certificate of search being then delivered. If it is desired to have the action against both the seller and his agent, they may both be sued, but in that case, while the conclusion against the agent would be to implement his obligation by delivering the certificate of search or by purging the record, the conclusion against the seller would be to implement the contract of sale by delivery of a valid title free of all incumbrances and to

purge the record. If it is desired to sue only the agent, the conclusions against the seller can easily be separated and omitted.

The obligation is almost always addressed to the purchaser's agent, and although the purchaser himself is the proper pursuer, his agent should probably be a consenter.

It is still an open question whether purchasers are entitled to demand official searches.

Sheriffdom of at .

A. B. [*designation*] (with consent and concurrence of G. H., solicitor, Glasgow), *Pursuers*,

against

C. D., solicitor, Glasgow, and E. F. [*designation*], *Defenders*.

The claim of the pursuer is—

For implement of an obligation, contained in a holograph letter granted by the defender C. D. on behalf of the defender E. F., to deliver to pursuer searches showing a clear record against the heritable property, No. Street, , which by missive of sale dated , the said E. F. sold to pursuer, and for implement by defender E. F. of said missive of sale.

Therefore the pursuer craves the Court—

To grant a decree against the defenders, jointly and severally, for payment to the pursuer of £5, being the cost of a search of the subjects after mentioned procured by pursuer: To ordain defender C. D. to implement the obligation contained in his letter to the pursuer G. H., dated 19 , whereby he undertook [*quote terms of obligation, e.g.* to exhibit, within three months from the date thereof, certificates of search for incumbrances affecting the subjects No. Street, , showing the record to be free from all such incumbrances]: To ordain the defender E. F. to implement the missives of sale, dated 19 , whereby, *inter alia*, he bound himself, in exchange for £ , to deliver to pursuer a valid title of the subjects before mentioned, free of all incumbrances: To ordain both defenders (1) to exhibit to the pursuers, within such time as the Court may appoint, certificates showing that there are no incumbrances affecting the said subjects prior to [*date*] [the date of recording the pursuer's title thereto in the Register of Sasines]; and (2) to purge the records of all incumbrances affecting the said subjects, and in particular of a bond and disposition in security for the sum of £ , granted by [*give names of grantor and grantees and date of recording*],

over said subjects; and in the event of the defenders' failure to do so, to grant a decree against the defenders, jointly and severally, for payment to the pursuer of £ in name of damages; and to find the defenders liable in expenses.

CONDESCENDENCE.

1. The pursuers are [*design*]. The defender C. D. is a solicitor at , and was law-agent for the defender E. F. in the transaction after mentioned.

2. By missives of sale, dated 19 , the said E. F. sold to the pursuer the subjects No. Street, , at the price of £ , with entry at Whitsunday 19 . The transaction was settled at the term of Whitsunday 19 , when pursuer paid said price and obtained delivery of the disposition and prior titles.

3. At the settlement the defender C. D. executed and delivered to the said G. H., as law-agent for the other pursuer, a holograph letter of obligation. The said letter of obligation and missive of sale are produced herewith.

4. The price paid by the pursuer to defender for said subjects was the full market value thereof, and would not have been paid unless the subjects were to be free and unincumbered. The price was paid in reliance on said obligations to free the said subjects of all incumbrances.

5. The period within which the said obligation was to be implemented has expired, and although the pursuer has repeatedly called upon the defenders to deliver searches showing a clear record, they have failed to do so, and the present action has been rendered necessary.

6. The pursuer has, at his own expense, obtained a search of incumbrances affecting said subjects, for which he paid £5, and he produces herewith a certificate by the official searchers, from which it appears that the said subjects are now incumbered by the bond and disposition in security described in the crave hereof. The said incumbrance was recorded previous to the pursuer's infeftment, and was not disclosed to the pursuer.

7. In the event of a discharge of said bond and disposition not being procured by the defenders, the pursuer will suffer the loss of its amount, viz. £ , together with the interest on it, and the cost of its discharge.

8. The loss and damage suffered by the pursuer through the failure of the defenders to purge the record of incumbrances over the said property is moderately stated at the amount sued for.

PLEAS IN LAW.

1. The defender C. D. having failed to exhibit a certificate of search showing the record free of all incumbrances affecting said subjects, in terms of his obligation thereanent, the pursuer is entitled to decree of implement against him, as concluded for.

2. The pursuer having paid a full price for said subjects, is entitled to have the record purged of all incumbrances at the expense of the defender E. F.

3. In event of defenders failing to implement their said obligations, the pursuer is entitled to decree for damages as concluded for.

3. Of Contract of Lease of House.

This action is competent in the Sheriff Court even if it involves a decision on the constitution of the lease.

Sheriffdom of at .

A. B. [*designation*], proprietor of the house, No. Street, , *Pursuer*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For implement by the defender of a contract of lease, dated , of the house, No. Street, , leased by pursuer to defender for three years from Whitsunday 19 .

Therefore the pursuer craves the Court—

To ordain the defender to implement the said contract by entering into possession of said dwelling-house, and by plenishing, airing, and firing the same in such manner as will prevent deterioration; and in the event of the defender's failure to do so, to grant a decree against the defender for payment to the pursuer of £ as damages, with interest; and to find the defender liable in expenses.

CONDESCENDENCE.

1. On or about 19 the defender, by contract of lease, dated 19 , leased from the pursuer the said house and pertinents for a period of three years from Whitsunday 19 . The lease, which is produced herewith, contains, *inter alia*, the following provisions and obligations [*quote such as may be necessary*].

2. The defender has now refused to enter into possession of said house, or to implement any of the obligations undertaken by him in

said lease, and has intimated to pursuer that he considers himself as not bound by it. In these circumstances the present action has become necessary.

3. By defender's refusal to implement his part of said contract of lease, the pursuer has suffered, or will suffer, loss and damage to the amount sued for. In particular [*specify particular damage, e.g.* loss of rent, loss of market, expense and trouble of reletting, &c.].

PLEAS IN LAW.

1. The defender having bound himself to pursuer in terms of said contract of lease as condescended on, the pursuer is entitled to decree of implement as concluded for.

2. Failing implement, the defender is bound to compensate the pursuer for the loss and damage caused by his breach of said contract.

4. Of Contract of Lease of Shop.

Sheriffdom of at .

A. B. [*designation*], proprietor of the shop, No. Street, , *Pursuer*,

against

C. D. [*designation*], lessee of said shop, *Defender*.

The claim of the pursuer is—

For implement by the defender of a contract of lease between him and pursuer of the shop, No. Street, , by occupying said shop and conducting therein the business of a baker.

Therefore the pursuer craves the Court—

To ordain the defender, within such time as the Court may appoint, to implement the said contract by entering into possession of and occupying the shop, No. Street, , and conducting therein the business or trade of a retail baker; and failing his doing so, to authorise the pursuer to let said shop for the remainder of the lease for such rent as he can obtain, reserving to the pursuer all claims for rent due, damages, or otherwise in respect of defender's failure to implement his share of said contract; and to find defender liable in expenses.

CONDESCENDENCE.

1. The defender by contract of lease dated 19 , leased from the pursuer the said shop and pertinents for a period of three

years from Whitsunday 19 . The lease, which is produced herewith, contained, *inter alia*, a stipulation that defender should occupy said shop at the term of Whitsunday 19 , and carry on therein, during the period of the lease, the business or trade of a retail baker.

2. The defender has failed to carry out said contract, and has refused to enter into possession of said shop, and to carry on the business of a baker therein, and the present action has therefore been rendered necessary.

3. By defender's failure to implement his part of said lease the pursuer has suffered, and will suffer, loss and damage, for which he meantime reserves his claim.

PLEA IN LAW.

The defender being bound to implement said contract as condescended on, and having failed to do so, pursuer is entitled to decree of implement and warrant of authority, with expenses, as craved.

5. To Stock and Cultivate Farm.

Sheriffdom of at .

A. B. [*designation*], proprietor of the farm and lands of X., *Pursuer*,

against

C. D. [*designation*], tenant of said farm, *Defender*.

The claim of the pursuer is—

For implement by the defender of his obligation to stock and cultivate said farm.

Therefore the pursuer craves the Court—

To ordain the defender to implement the obligations incumbent on him as tenant of the farm and lands of X., in the parish of Y., under the lease entered into between the pursuer and defender, dated 19 , by [*quote from the terms of the lease, e.g.* instantly stocking and plenishing the said farm and lands to an adequate extent, and by cultivating, labouring, and manuring the same]; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is heritable proprietor of the said farm and lands of X., and the defender is tenant thereof, under lease dated . The lease is for years, of which years are yet to run.

2. By the terms of said lease the pursuer is *inter alia* bound to [*quote articles of lease which are not being implemented*].

3. [*Detail the several matters in which the defender fails to implement his lease, e.g.* The farm carries a stock of [*specify numbers*]. Since [*date*] the defender has sold off all the stock on said farm with the exception of , and has sublet the pasture to different persons for summer and winter grazing. With the exception of those above mentioned, none of the bestial at present on the farm belong to defender.]

4. By the article of said lease the defender is bound to [*quote as to cropping*]. In contravention of said provisions, the defender has [*state facts as to miscropping*].

5. The pursuer has repeatedly called upon defender to implement the conditions and obligations of the said lease, but the defender refuses to alter his practice, as condescended on, and the present action is necessary.

PLEA IN LAW.

The pursuer being entitled to have said farm stocked and plenished with the property of defender, and the defender having failed to cultivate said farm in terms of said lease, the pursuer is entitled to decree, as craved, with expenses.

6. To Implement Indenture.

Sheriffdom of at .

A. B., apprentice, residing with his father E. B. [*designation*], with consent and concurrence of the said E. B., *Pursuer*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For implement by the defender of his obligations towards pursuer, in terms of the indenture between them, dated .

Therefore the pursuer craves the Court—

To ordain the defender to receive back the pursuer A. B. into his works at , and to teach and instruct him in the trade of ; and in the event of defender's failure to do so, within such time as the Court may appoint, to declare said contract at an end, and to grant a decree against the defender for payment to the pursuer of £ as damages, with interest; and to find the defender liable in expenses.

CONDESCENDENCE.

1. By indenture, dated 19 , the pursuer, the said A. B., with consent of his father the said E. B., was apprenticed to the

defender to learn his trade of mechanical engineer. The pursuer duly commenced his said apprenticeship, and regularly attended at the defender's works until dismissed by the defender as after mentioned.

2. About the beginning of the present year the pursuer E. B. discovered that his son, the said A. B., had, during the months that he had been in the employment of the defender, been engaged solely in going messages, sweeping floors, and similar work, and that during the whole of said period he had been given no opportunity of learning or acquiring a knowledge of the business of mechanical engineer.

3. The pursuer E. B. accordingly, on or about 19 , called on the defender and represented to him the necessity of his said son being taught, or at least afforded opportunities of learning, his business in terms of his indenture. The defender thereupon promised to see that this request was complied with, and the pursuer A. B., relying on this promise, continued to attend at the defender's works as before.

4. Notwithstanding his said promise, however, no change was made in the treatment of the said A. B., and he was still employed only at the same trivial work as before. Therefore, on 19 , the pursuer E. B. wrote to the defender a letter in the following terms, which was delivered by the pursuer A. B. [*quote it*]. No reply was vouchsafed to said letter, but on 19 , being the first pay-day thereafter, the pursuer A. B. was told by the defender that he need not come back on the Monday, as he was not wanted any longer. Since then both the pursuer E. B. and his agent have applied to the defender to receive back A. B. and implement his indenture, but without success.

5. The said A. B. has already suffered considerable loss through the defender's failure to teach him or afford him opportunity of acquiring a knowledge of his business; and in the event of defender's persisting in his refusal to implement his indenture, the pursuers will suffer loss and damage to at least the extent sued for.

Pleas in Law.

1. The defender having bound himself by said indenture to teach the pursuer the trade and business of engineer, and having refused to do so, the pursuers are entitled to degree of implement as craved.

2. Failing implement as concluded for, the pursuers are entitled to discharge and delivery of the said indenture and to compensation from the defender, all as concluded for, with expenses.

7. Of a Contract of Ground Annual, or for Damages.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For implement by defender of a contract of ground annual between him and pursuer, dated .

Therefore the pursuer craves the Court—

To ordain the defender, within such time as the Court may appoint, to erect upon the ground disponed under said contract, and described therein as [*description*], a villa or cottage capable of yielding an annual rental of not less than £ , and failing his so doing to grant a decree against defender for payment to the pursuer of £ , with interest from the date of citation; and to find defender liable in expenses.

CONDESCENDENCE.

1. By contract of ground annual between pursuer and defender, dated , and recorded in the Division of the General Register of Sasines for the county of ; the 19 , the pursuer disponed to defender [*quote description from contract*].

2. By the terms of said contract, which is herewith produced, the defender bound himself within to erect on said piece of ground a villa or cottage of [*description*], capable of yielding an annual rental of not less than £ .

3. years have now elapsed, but, notwithstanding repeated demands by the pursuer, the defender has failed to erect any building on said ground.

4. Through defender's failure to implement his obligation the pursuer has suffered, and will suffer, loss and damage to at least the sum sued for.

PLEAS IN LAW.

1. The defender being bound by the terms of said contract to implement the obligation therein contained, pursuer is entitled to decree of implement, with expenses, as craved.

2. The pursuer having suffered, and being likely to suffer, loss and damage through defender's failure to implement his obligation, is entitled to damages, with expenses, as craved.

8. Of a Building Contract and for Damages.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*] [and E. F. for any interest he may have], *Defenders*.

The claim of the pursuer is—

For implement by defender C. D. of a contract between pursuer and him, dated , for the erection of a dwelling-house on a feu belonging to pursuer, and situated at No. Street, , in conformity with said contract and relative specifications, schedules, and plans; and failing implement, for payment by defender C. D. of £ as damages, and for authority to pursuer to erect said house at defender's expense.

Therefore the pursuer craves the Court—

To ordain the defender, within such time as the Court may appoint, to complete the erection of said dwelling-house in accordance with the terms of said contract and relative specifications, schedules, and plans: To grant a decree against the defender for payment to the pursuer of £ , as damages, with interest from the date of citation; failing defender's erection of said house as aforesaid [to authorise G. H., architect in Y., or other person of skill, to inspect and report on the present state of the building, the amount of work done, and its value, and the amount which remains to be done, and its estimated cost]: To authorise the pursuer, at the sight of the said G. H. or other fit person [*or* a person to be appointed by the Court] to erect [*or* to finish and complete the erection of] said dwelling-house, in conformity with said contract, specifications, schedules and plans, at defender's expense, and to grant a decree against defender for payment thereof [*or* of said estimated expense]; and to find defender liable in expenses.

CONDESCENDENCE.

1. On 19 the defender C. D. agreed to build and to furnish all necessary and proper materials for building for the pursuer a dwelling-house on a feu belonging to him, situated in X. Street, Y., in terms of the plans and specifications thereof, signed by the defender C. D., at the sum of £1000, conform to offer by the defender C. D., and the pursuer's acceptance indorsed thereon, herewith produced.

2. The defender C. D. commenced his operations in or about the

month of 19 , and continued at the work till 19 , or about that time, when he ceased working and went away, leaving the building in an unfinished and incomplete state.

[3. On said 19 , an arrestment was used in the pursuer's hands against the defender C. D., at the instance of the defender E. F.]

4. The pursuer has paid to the defender C. D. [prior to the date of the said arrestment,] on account of the said contract, sums to the amount of £300, but [since the said C. D. has learned that said arrestment has been used in the pursuer's hands,] he wrongfully refuses or delays to fulfil his said contract with the pursuer by finishing and completing the said dwelling-house in terms thereof.

PLEAS IN LAW.

1. The defender having refused to fulfil the obligation undertaken by him in said contract, pursuer is entitled to decree of implement, with expenses, as craved.

2. The defender being in breach of his obligation as condescended on, pursuer is entitled to damages, with expenses, as craved.

ALTERNATIVE CONDESCENDENCE.

(To meet the case of a contract for mason work, the necessary alterations being made in the instance, statement of claim, and crave.)

CONDESCENDENCE.

1. On 19 the pursuer entered into a contract with the defender, by which the latter bound himself to execute and finish the mason work of a dwelling-house in E. Street, of F., and furnish and provide all necessary and proper materials therefor, according to the plans, sections, and specifications thereof, signed by the defender as relative to the said contract or agreement, and at the sight and to the satisfaction of G. H., architect in F., and to complete and finish the whole work by 19 .

2. The defender has unduly delayed to execute and otherwise implement the contract or agreement foresaid, and the pursuer has in consequence sustained damages to the amount of £ sterling. [*State details of damage.*]

3. The defender having failed to implement and fulfil the said contract, the pursuer should be authorised to obtain the same completed in manner contracted for, at the sight and to the satisfaction foresaid, and the defender should be decerned to pay to the pursuer

the expense thereby occasioned, which it is estimated will be not less than £ , and a further sum of £ as damages sustained by the pursuer, or which he may yet sustain, in consequence of the defender's failure to implement and fulfil the said contract or agreement.

PLEAS IN LAW.

1. The defender being bound to implement and fulfil his said contract or agreement, the pursuer is entitled to decree of implement, with expenses, as craved.

2. The defender having failed to implement his contract as condescended on, and the pursuer having suffered, and being likely to suffer, loss thereby, the pursuer is entitled to damages as craved.

3. The damages craved being fair and reasonable, decree should be pronounced therefor.

Imprisonment.—*See* ALIMENT, No. 9.

Improbation.—*See* MINUTE.

Improbative Deed, Declarator of Validity of.—*See* DECLARATOR, No. 23.

Improvements. — *See* AGRICULTURAL HOLDINGS ACT; CROFTERS; ENTAIL; FACTOR.

Incident Diligence.—*See* MOTION.

Incumbrances, Implement of Obligation to Grant Disposition Clear of. — *See* IMPLEMENT, No. 2.

Indenture.—*See* IMPLEMENT.

Industrial and Provident Societies Act, 1893.—*See also* FRIENDLY SOCIETIES.

NOTE.—*Sec.* 49 *of the Act provides that all disputes between members* (*including persons who have not for more than six months ceased to be members*) *and the society or its officials must be determined in accordance*

with the rules of the society, without resort to a court of law; but an application for the enforcement of any such decision may be made to the Sheriff. Where the rules of the society direct that disputes shall be referred to justices, the dispute shall be determined by a court of summary jurisdiction, but the parties may enter into a consent to refer such dispute to the Sheriff. Where the rules of the Society contain no direction as to disputes, or where no decision is made on a dispute within forty days after application to the society for a reference under its rules, the aggrieved member or person may apply to the Sheriff for a determination. By sec. 5 the word "Limited" must be the last word in the name of every society registered under the Act. Such societies, unlike Friendly Societies, sue and are sued in their registered name alone (sec. 21).

1. By Expelled Member for Reinstatement.

(*See* FRIENDLY SOCIETIES, *note*, and Form 1.)

2. To Determine a Dispute, where no Decision has been Given under Reference within Forty Days after Application (s. 49 (5)).

(*See* FRIENDLY SOCIETIES, *note*, and Form 2.)

3. To Determine a Dispute, Cognisable under the Rules by a Court of Summary Jurisdiction and by the Consent of Parties Referred to the Sheriff (s. 49 (4)).

Sheriffdom of at .

The A. B. Produce Supply Association, Limited, registered under the Industrial and Provident Societies Act, 1893, Street, , and C. D. [*designation*], a member of said Association, *Pursuers.*

The demand of the pursuers is—

For determination of a dispute, cognisable under the rules of said association by a court of summary jurisdiction, and hereby of consent of parties referred to the determination of the Court.

Therefore the pursuers crave the Court—

To hear and determine, in terms of sec. 49, subsec. (4), of the Industrial and Provident Societies Act, 1893, the dispute between the parties as to [*state nature of dispute*].

No condescendence appears to be necessary, but if it is deemed expedient to have one, the circumstances under which the dispute arose, and its nature, may be briefly narrated.

PLEA IN LAW.

The said dispute being cognisable under the rules of the said association by a court of summary jurisdiction, and the parties having consented to its determination by the Court, said dispute should be heard and determined in terms of the statute.

4. To Enforce a Decision under a Reference (s. 49 (1)).

Sheriffdom of at .

The A. B. Produce Supply Association, Limited, registered under the Industrial and Provident Societies Act, 1893, Street, , *Pursuers*,

against

C. D. [*designation*] [lately] a member of said association, *Defender*.

The demand of the pursuers is—

For a decree interponing authority to a decision pronounced on by E. F. [*designation*], in a reference to him under the rules of the society by pursuers and defender.

Therefore the pursuers crave the Court—

To interpone authority to a decision pronounced on by the said E. F., ordaining defender to deliver to the pursuers the scroll correspondence book for the year 19 : To ordain defender to deliver said book accordingly; and to find defender liable in expenses.

CONDESCENDENCE.

1. The defender was, till within the last six months, secretary to the said association, and as such had the custody of pursuers' books and papers, and among others of the "scroll correspondence" book, delivery of which is craved.

2. In consequence of [*state grounds of quarrel*] the defender resigned the secretaryship of the association on . He took with him the said book, which belongs to the pursuers.

3. The pursuers have frequently applied to defender for delivery of said book, but he refuses to deliver it up on the ground that it belongs to him, and was used in the business of the association for his own private use.

4. Under the rules of the pursuers' association, which are herewith

produced, such a dispute falls to be determined by the amicable decision of a person to be mutually chosen by the parties.

5. On the said dispute was accordingly referred to the said E. F., who after hearing parties on pronounced the deliverance, herewith produced, enforcement of which is craved.

6. The defender, notwithstanding said decision, refuses to deliver up said book, and the authority of the Court is therefore invoked to compel him to do so.

PLEA IN LAW.

The said dispute having been decided in the manner provided by therules of the said association, and said decision being therefore binding on the parties, the pursuers are entitled, in terms of sec. 49, subsec. (1), of the Industrial and Provident Societies Act, 1893, to have the same enforced, with expenses, as craved.

Infringement.—*See also* INTERDICT.

1. Interdict of Infringement of Copyright and Delivery of Copies of Infringing Work.

Sheriffdom of at .

A. B. & Co. [*designation*], *Pursuers*,

against

C. D. [*designation*] and M. N. [*designation*], *Defenders*.

The demand of the pursuers is—

For interdict against the defenders printing, publishing, selling, or exposing for sale, the book entitled "The Sportsman," and for interim interdict; for delivery to pursuers of all copies of said book in defenders' possession, and failing delivery, for payment of £ and for expenses.

Therefore the pursuers crave the Court—

To interdict the defenders and either of them from printing, publishing, selling or exposing, or advertising for sale, the book entitled "The Sportsman": To ordain the defenders and either of them to deliver up to the pursuers all the copies in their possession or under their control of the said book [and failing delivery, to ordain the defenders jointly and severally to pay to the pursuers £ sterling]: To grant interim interdict, and to find the defenders liable in expenses.

CONDESCENDENCE.

1. The pursuers are printers and publishers in , and in particular are the publishers and proprietors of the "Encyclopædia of

Sport." The defender C. D. is , and a well-known writer on the subject of sport. The defender M. N. is a publisher in .

2. About the month of 19 , the pursuers arranged with the defender C. D. that he should furnish three signed articles on and for the said Encyclopædia. The said articles, it was agreed, should extend together to words, and should be paid for at the rate of £ per thousand words.

3. The said three articles were accordingly furnished by the said C. D., and were duly paid for by the pursuers at the agreed-on rate, and were published in the said "Encyclopædia of Sport." The said C. D.'s receipt for said payment is in the following terms: " ," and is herewith produced and referred to. The pursuers were duly registered as the proprietors of the copyright of the said Encyclopædia.

4. In or about the month of 19 , the defender M. N., acting for and with the defender C. D., published and sold in London a work called "The Sportsman," by C. D. The said work is a mere reprint with unimportant modifications of the three articles contributed by the said C. D. to the pursuers' Encyclopædia, and is an infringement of the pursuers' copyright therein. The said M. N. still has in hand or under his control a large number of copies of the said work.

5. The said book has, the pursuers believe, had a large sale both in Great Britain and abroad, and cannot have failed to affect and reduce the sale of the pursuers' Encyclopædia. The pursuers' claims for the damage sustained by them through the said infringement are hereby reserved. The pursuers have repeatedly applied to both the defenders requiring them to withdraw the said work, but they decline to do so, and the present action is thus necessary.

PLEAS IN LAW.

1. The defenders having infringed the pursuers' copyright in the said publication as condescended on, the pursuers are entitled to interdict as prayed for.

2. The said "The Sportsman" being an infringement of the pursuers' copyright, they are entitled to delivery of all copies thereof in the possession or under the control of the defenders or either of them.

2. Infringement of Trade Mark.

(*See under* TRADE MARKS and TRADE NAMES.)

3. Interdict against Infringement of Patent.

NOTE.—*It was for some time doubted whether it was competent in a Sheriff Court action to raise the question of the validity of the patent—*

a plea very often raised in defence; but that doubt appears to be for the present put at rest by the case of Gill v. *Cutler*, 23 *R.* 371. *The same case decided* (*Lord Young dissenting*) *that where, as is frequently the case, the real defender—the manufacturer of the infringing articles—is not subject to the jurisdiction of the Sheriff Court in which action is raised, he may prorogate the jurisdiction.*

The patentee must confine himself to either an accounting for profits or damages, but cannot ask both. In the general case a claim for damages will be the readiest remedy, but if it is desired to claim an accounting, the appropriate conclusions and condescendence may easily be adapted from the forms for accounting given under that heading.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. & Co. [*designation*], *Defenders.*

The demand of the pursuer is—

For interdict against defenders infringing pursuer's patent dated and numbered of 19 , for [*title of patent*] by making [importing], vending, selling or offering for sale or using [*name articles*] made, or capable of being used in the manner described, and claimed in the specifications relative to said letters patent, or substantially the same therewith; and for payment by the defenders to the pursuer of £ , with interest and expenses.

Therefore the pursuer craves the Court—

To interdict the defenders from infringing, by themselves or others, the letters patent, dated and numbered of 19 , granted to the pursuer [*title of patent*]; and to interdict the defenders, by themselves or others, from making [importing], vending, or using [*or* advertising and offering to make or supply] any [*name articles*] made, applied, or capable of being used in the manner described and claimed in the specifications relative to the said letters patent, or substantially the same therewith, or made with or embracing in its manufacture any of the improvements claimed in the said specifications; and from further or otherwise infringing the said letters patent; and further, to grant a decree against defenders for payment to the pursuer of £ , with interest from the date of citation; and to grant interim interdict; and to find the defenders liable in expenses.

CONDESCENDENCE.

[*No form of condescendence is given, as they vary almost* in toto *in every case. They should be full and well detailed, both as to the invention and the method, &c., of the infringements. A very full style of condescendence, containing averments adapted to most circumstances, will be found on p.* 202 et seq. *of vol. ix. of Green's Encyclopædia.*]

PLEAS IN LAW.

1. The defenders having infringed the pursuer's said letters patent, the pursuer is entitled to interdict as craved.

2. The pursuer having suffered loss and damage through the defenders' infringement of the said letters patent, is entitled to reparation as concluded for.

[*The following may also be useful occasionally*]—

3. The defenders are, in the circumstances condescended on, barred from challenging the validity of the said letters patent.

4. In respect of the certificate libelled, the pursuer is entitled, in terms of sec. 31 of the Patents Act, 1883, to his full costs, charges, and expenses as between agent and client.

Inland Revenue, Appeal against.—*See* APPEAL.

Insane Persons.—*See* FACTORS; LUNACY.

Inspection.—*See also* GABLE; IMPLEMENT.

NOTE.—*In certain cases the Court recognises the right of parties interested in a subject to have the present condition of the subject judicially ascertained by a remit to a man of skill. One of the most familiar examples is where, at the termination of a lease, the landlord and tenant are at variance as to whether there has been adequate performance of stipulations for the repair and maintenance of fences and buildings.*

In such cases the petition may ask merely for inspection and report, or it may go on to crave an order for the execution of the repairs which the reporter may consider necessary, and for payment of the cost of these repairs by the respondent (*see Lees* v. *Marr Typefounding Co.*, 4 *R.* 1088).

1. For Inspection, &c., of Farm on Ground of Miscropping.

Sheriffdom of at .

A. B. [*designation*], proprietor of the farm of X., in the parish of Y. and county of Z., *Pursuer*,

against

C. D. [*designation*], lessee of said farm, *Defender*.

The demand of the pursuer is—

For warrant to inspect the farm of X. in order to discover whether it has been properly laboured and manured by defender, and if not, for warrant to do so at defender's expense.

Therefore the pursuer craves the Court—

To remit to a person of skill to visit and inspect the farm of X., in the parish of Y., and to report to the Court the condition thereof, and whether it has been laboured and manured by the defender in terms of the lease thereof between pursuer and defender, dated , and if not, in what respects the defender has failed to comply with said lease, and what is necessary and proper to be done to bring it into a state of cultivation in conformity with the said lease: To grant warrant to the pursuer to manure, labour, and cultivate the said farm in terms of said report, all at the cost of the defender; and on such cost being ascertained, to grant a decree against the defender for payment of the amount thereof to the pursuer; and to find the defender liable in expenses.

Condescendence.

1. The pursuer is proprietor of the estate of Z., of which the farm of X. forms part. The defender is tenant of said farm, under a lease between the pursuer and him, dated .

2. By said lease it is provided [*set out stipulations which have been violated*].

3. [*Set out specifically the violations complained of.*]

4. In consequence of the defender's actings as above condescended on, the said farm has greatly deteriorated, and the present action has been instituted to prevent further deterioration, and to bring the said farm into a proper state of cultivation.

Plea in Law.

The defender having failed to cultivate said farm in terms of his lease, the pursuer is entitled to inspection and warrant as craved.

2. For Inspection of Farm at Termination of Lease.

Sheriffdom of at .

A. B. [*designation*], proprietor of the farm of X., in the parish of Y. and county of Z., *Pursuer*,

against

C. D. [*designation*], lessee of said farm, *Defender*.

The demand of the pursuer is—

For warrant to inspect the farm of X. in order to discover whether the fences, house, and steading are in good order and habitable and tenantable condition, and if not, to ascertain the probable cost of making them so.

Therefore the pursuer craves the Court—

To remit to a person or persons of skill to visit the farm of X. in the parish of Y., and to inspect the fences and the house and steading thereon, and to report what is the present condition thereof, and whether they are in good order, and what will be the probable cost of putting the fences in good order and the houses and buildings in proper habitable and tenantable condition, reserving entire all pleas of parties or claims which they may respectively have against each other; with expenses in the event of the defender appearing and opposing the conclusions hereof.

Condescendence.

1. The pursuer is proprietor of the estate of X., which includes *inter alia* the farm of Y. The defender is tenant of the said farm of Y. under and by virtue of a lease, dated . . The said lease expires on , and the farm and buildings, &c., thereon, have been let by the pursuer to another tenant.

2. By the said lease it is provided [*take in obligation as to fences and buildings*].

3. The defender has failed to implement the said obligation, and has allowed the fences and buildings to fall into a state of disrepair. Under his lease with the incoming tenant, the pursuer is bound to put the buildings into a state of repair, but before executing any repairs it will be necessary to ascertain whether and to what extent the defender has implemented his obligation under the lease.

4. In spite of repeated requests by the pursuer, the defender refuses to concur with him in taking any steps whereby the existing state of matters may be ascertained.

PLEAS IN LAW.

1. The pursuer being entitled to have the existing condition of the said fences and buildings ascertained, warrant should be granted, as craved.

2. In the event of the defender appearing and offering opposition, he should be found liable in expenses.

3. For Inspection of House and for Order on Landlord to Execute Repairs.

Sheriffdom of at .

A. B. [*designation*], tenant of the house No. Street, *Pursuer*,

against

C. D. [*designation*], proprietor of said house, *Defender*.

The demand of the pursuer is—

For warrant to inspect the said house in order to ascertain whether it is in a proper habitable and tenantable condition, and if not, for a decree ordaining defender to make it so; and failing his doing so, for authority to pursuer to do so at defender's expense.

Therefore the pursuer craves the Court—

To remit to a person of skill to inspect the house No. X. Street, Y., belonging to the defender and occupied by the pursuer, to report to the Court the present condition thereof, and whether it is in a proper tenantable and habitable state, and if not, what repairs are necessary to put the said house into such proper tenantable and habitable condition: To ordain the defender, within such time as the Court may appoint, to execute such repairs at the sight and to the satisfaction of an inspector appointed by the Court; and failing his doing so within such period, to grant warrant to and authorise the pursuer to execute such repairs at the sight and to the satisfaction of such inspector; and on the cost thereof being ascertained, to grant a decree against the defender for payment to the pursuer of the cost of such repairs; with expenses.

CONDESCENDENCE.

1. The pursuer is tenant of the house No. X. Street, Y., of which the defender is proprietor, under a lease, dated .

2. [*If the lease contains provisions as to repairs, say*—By the said lease it is provided [*take in clause*].]

3. [*Give particulars of dilapidation of house and repairs which the pursuer considers necessary.*]

4. The pursuer has repeatedly called upon the defender to put the house into a proper tenantable and habitable condition, but he refuses or delays to do so, and the present action has thus been rendered necessary.

PLEAS IN LAW.

1. The defender, as proprietor of the said house, being bound to keep the same in a proper tenantable and habitable condition, and having failed to do so, decree should be granted as craved.

2. [The defender being bound, in terms of the said lease, to execute the repairs therein stipulated, and having failed to do so, the pursuer is entitled to decree and warrant as concluded for.]

3. In the event of the defender failing to execute the necessary repairs, warrant should be granted to the pursuer to execute the same at the defender's expense.

4. For Inspection of Mutual Wall.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For warrant to inspect the mutual wall between pursuer's and defender's said houses in Street, , in order to ascertain whether it is in good order; and if not, for authority to pursuer to rebuild it at his and defender's mutual expense.

Therefore the pursuer craves the Court—

To remit to a person of skill to inspect the mutual wall situated between the property of the pursuer at No. X. Street, Y., and the property of the defender, No. X. Street aforesaid, and to report to the Court what is the present condition thereof, and whether it is in good and sufficient order, or whether it requires to be rebuilt, and if so, what will be the cost thereof: To grant warrant to the pursuer to take down and rebuild the said wall, and to execute all such operations as are necessary for that purpose, at the sight and to the satisfaction of the said person of skill; and on the cost thereof being ascertained, to grant a decree against the defender for payment to the pursuer of one-half thereof, with expenses.

CONDESCENDENCE.

1. The pursuer is the proprietor of the subjects No. X. Street, Y., and the defender is proprietor of the subjects No. X. Street aforesaid. Said two properties adjoin one another, and are separated by a wall. Said wall is declared by the titles of their properties to be mutual to the pursuer and defender.

2. The said wall has been suffered to fall into a state of great disrepair, and it has now become completely ruinous.

3. The pursuer has called upon the defender to concur with him in having the said wall rebuilt, but the defender refuses or delays to do so, and the present application has thus been rendered necessary.

PLEA IN LAW.

The wall in question being mutual to pursuer and defender, and the defender having refused to concur in having it rebuilt, warrant should be granted, as craved.

5. For Inspection and Repair of Subjects as to which the Obligation to Repair is the Subject of Litigation.

If the principal litigation is being carried on in the Court of Session, a summary petition to the Inner House for the same purpose would also be competent (*Earl of Hopetoun and Scots Mining Co.*, 21 *D.* 218). *The prayer should not ask for more than is necessary to maintain the* status quo *and prevent possible damage during the litigation.*

Sheriffdom of at .

A. B. [*designation*], proprietor of the estate of X., in the parish of Y. and county of Z., *Pursuer*,

against

C. D. [*designation*], tenant of the mill of M. on said estate, *Defender.*

The demand of the pursuer is—

For warrant to inspect the mill-lade of the mill of M., occupied by defender, in order to ascertain whether it is in an efficient state of repair, and if not, to ordain the defender to put it in such state; and failing his doing so, to authorise the pursuer to execute the necessary repairs.

Therefore the pursuer craves the Court—

To remit to a person or persons of skill to visit and inspect the mill-lade pertaining to the mill of M., presently occupied by the defender, and to examine the condition and state of repair of the said mill-lade, sluice gates, overflows, and other relative

works connected therewith, and to report to the Court what repairs are necessary to put and maintain the said mill-lade and relative works in an efficient state of repair, and also the probable expense of such repairs; and thereafter, upon consideration of the said report, to ordain the defender forthwith to execute the said repairs; and, failing his doing so within such short space as the Court may appoint, to grant warrant to and authorise the pursuer to execute such repairs at the sight of the said inspector or inspectors, or of such other person as the Court may name, reserving to the pursuer his right to recover from the defender the whole of the expenses of and incident to the said repairs, including the expenses of this application and of the procedure to follow hereon.

CONDESCENDENCE.

1. The pursuer is heritable proprietor of the estate of X., in the county of Y. The defender is tenant of the mill of M., which forms part of the said estate of X., under a lease by the pursuer's father in his favour, dated 18 , for the space of years, from and after the term of Whitsunday 18 [*narrate provisions of lease*].

2. Notwithstanding the said obligation, the defender has failed to keep either the mill or mill-lade in a state of repair, and they are now in a very dilapidated and ruinous condition. The defender has been repeatedly requested by the pursuer to execute the necessary repairs, but without effect.

3. In these circumstances, and particularly in view of the approaching termination of the defender's lease, the pursuer has raised an action in the Court of Session to have the pursuer ordained to implement the terms of said lease by repairing the mill and mill-lade and relative works, or otherwise for payment of damages. The defender has lodged defences to the said action, in which *inter alia* he denies liability to execute the said repairs. A proof will, it is believed, be necessary before any decision can be given in the said action, and in any event it cannot be decided for several months.

4. The said mill-lade, which passes through other parts of the said estate of X., is for a considerable distance at a higher level than the adjoining field, and in the event of the embankment giving way, the water from the lade will flood these fields and cause extensive damage.

PLEA IN LAW.

The said mill-lade being in a state of disrepair and dangerous to the adjoining lands belonging to the pursuer, he is entitled to have it inspected and repaired as craved.

6. For Inspection of Mineral Workings.

Sheriffdom of at .

A. B. [*designation*], proprietor of the lands of X., in the parish of Y. and county of Z., *Pursuer*,

against

C. D. [*designation*], tenant of the minerals on the lands of Z., adjoining pursuer's lands of X., *Defender*.

The demand of the pursuer is—

For warrant to inspect the coal and other underground workings of the defender, so far as adjacent to or underneath the pursuer's lands of X., and for a decree ordaining the defender to give pursuer free access to inspect, measure, and survey the same.

Therefore the pursuer craves the Court—

To appoint a person of skill to visit and inspect the coal or other underground workings of the defender, so far as the same are adjacent to or underneath the pursuer's property of X., and to report: To ordain the defender to give to the pursuer free access to and all necessary facilities for inspecting, measuring, and surveying the said workings; with expenses.

Condescendence.

1. The pursuer is proprietor of the estate of X., in the parish of Y., conform to [*set out pursuer's title*]. The defender is tenant of the minerals on the adjoining estate of Z.

2. Recently a number of fissures have appeared in the buildings of the farm of W., belonging to the pursuer. The said farm adjoins the estate of Z., and the said buildings are situated at a distance of or thereby from the march between the two properties.

3. The pursuer believes that the said fissures are due to the defender's mineral workings. On or about he applied to the defender to be allowed access thereto, for the purpose of inspecting the same, but the defender refused to grant such access, and the present action has thus been rendered necessary.

Plea in Law.

The injuries to the pursuer's property being apparently due to the defender's mineral workings, warrant should be granted for inspection thereof as craved.

Instance of Actions.

The Crown.

Public Departments of State.

The Crown Suits (Scotland) Act, 1857 (20 & 21 *Vict. c.* 44). *Every action, suit, or proceeding to be instituted in Scotland on behalf of or against "Her Majesty, her heirs and successors," or in the interest of the Crown, or on behalf of or against any public department, may be lawfully raised in the name and at the instance of or directed against "Her Majesty's Advocate" for the time being as acting under that Act.*

"Public Department" is by sec. 4 *declared to include the Treasury, War Department, the Post Office, Board of Inland Revenue, Board of Customs, Commissioners of Woods and Forests, Commissioners of Works and Public Buildings, Board of Trade, and all the like public departments, bodies, or boards.*

Some public departments are specially authorised to sue and are sued under the name of the department. See under "Public Departments."

A public department cannot be sued for damages.

In suing public authorities, regard must be had to the terms of the Public Authorities Protection Act, 1893, *under which there is a six months' limitation of actions.*

The Right Honourable A. B., His Majesty's Advocate, as acting under the Statute 20th and 21st Vict. c. 44, on behalf of His Majesty.

The Right Honourable A. B., His Majesty's Advocate, as acting under the Statute 20th and 21st Vict. c. 44, on behalf of [*any of the following*]—

1. The Commissioners of His Majesty's Treasury.
2. His Majesty's Principal Secretary of State for the War Department.
3. His Majesty's Postmaster-General.
4. The Commissioners of His Majesty's Board of Inland Revenue.
5. The Commissioners of Woods.
6. The Committee of His Majesty's Privy Council appointed for the consideration of matters relating to trade, commonly called the Board of Trade.

Public Departments and Boards which do not Sue through the Lord Advocate.

1. *Secretary for Scotland Act*, 1885, 48 & 49 Vict. c. 61.

The Right Honourable A. B., His Majesty's Secretary for Scotland.

2. *The Scottish Education Department.*

The Scottish Education Department, constituted under the Education (Scotland) Act, 1872, and the Secretary for Scotland Act, 1885.

3. TREASURY SOLICITOR *is a corporation in virtue of the provisions of the Treasury Solicitor Act*, 1876 (39 & 40 *Vict. c.* 18), *and sues in the name of—*

The Solicitor for the affairs of His Majesty's Treasury, incorporated by the Treasury Solicitor Act, 1876.

LOCAL GOVERNMENT BOARD *is constituted by the Local Government (Scotland) Act*, 1894 (57 & 58 *Vict. c.* 58), *under the style and title of—*

The Local Government Board for Scotland.

Public Bodies, Boards, Councils.

COUNTY COUNCIL

is incorporated by sec. 72 *of the Local Government (Scotland) Act*, 1889, *under the name of the County Council of the county, as the case may be, under which name it may sue or be sued.*

The County Council of the county of Edinburgh.

DISTRICT COMMITTEES

by sec. 79 *are sued under the designation of the district.*

1. The District Committee of the Middle Ward of the County Council of the county of Lanark.

2. The X. District Committee of the County Council of the county of Y.

COUNTY ROAD BOARD

constituted by sec. 16 *of Local Government (Scotland) Act*, 1889.

[*Name and design members*], being the members of and constituting the County Road Board of the county of X.

PARISH COUNCIL.

See Local Government (Scotland) Act, 1894, *secs.* 23 (2) (*b*) *and* 32.

1. The Parish Council of the parish of X., in the county of Y.

2. The Landward Committee of the Parish Council of the parish of X., in the county of Y.

TOWN COUNCIL.

See the Town Councils (Scotland) Act, 1900, *sec.* 5.

The [Lord] Provost, magistrates, and councillors of the city [*or* royal burgh or burgh] of X.

Special.

The Corporation of the city of Glasgow.

LOCAL AUTHORITIES.

By sec. 11 *of the Local Government* (*Scotland*) *Act,* 1889, *there are transferred to the County Council the whole powers and duties of*—(1) *Commissioners of Supply* (*except as aftermentioned*); (2) *county road trustees;* (3) *local authority under the Contagious Diseases* (*Animals*) *Acts and Destructive Insects Act,* 1887; (4) *local authority under Public Health Acts of parishes within the county, excluding burghs and police burghs; also the administrative powers and duties of justices of the peace in quarter sessions in respect of various matters contained in subsec.* (5).

[The X. district committee of]—

The County Council of the county of X., as local authority for administration of laws relating to public health in said [district of said] county in virtue of the provisions of the Local Government (Scotland) Act, 1889.

The provost, magistrates, and councillors of the burgh of X., as local authority for administration of the Contagious Diseases Animals Acts in said burgh.

COMMISSIONERS OF SUPPLY.

By sec. 12 *of the Local Government* (*Scotland*) *Act,* 1889, *all Commissioners of Supply existing at the date of that Act are continued.*

By the Commissioners of Supply Act, 1856, *the commissioners sue and are sued through their clerk.*

1. *As Pursuer.*

A. B. [*designation*], as clerk to and on behalf of the Commissioners of Supply of the county of X.

2. *As Defender.*

A. B. [*designation*], as clerk to the Commissioners of Supply of the county of X., and as such, representing said commissioners.

COMMISSIONERS OF POLICE.

By the General Police and Improvement (*Scotland*) *Act,* 1862 (25 *&* 26 *Vict. c.* 101), *these commissioners also sue and are sued through their clerk.*

A. B., solicitor, X., clerk to and as representing the commissioners of the police burgh of X.

Boundary Commissioners.

By sec. 45 (2) *of the Local Government* (*Scotland*) *Act*, 1889, *the commissioners are appointed under the style of*—

The Boundary Commissioners for Scotland.

Board of Lunacy.

1. *General Board.*

A. B. [*designation*], chairman, and C. D. [*designation*], E. F. [*designation*], &c., commissioners, being the members of and constituting the General Board of Commissioners in Lunacy for Scotland.

If defenders, add address of commissioners' office, viz., 51 Queen Street, Edinburgh.

By sec. 21 *of The Lunacy* (*Scotland*) *Act*, 1866 (29 *&* 30 *Vict. c.* 51), *penalties are recovered in name of secretary*—

A. B., advocate, Edinburgh, Secretary of the General Board of Commissioners in Lunacy for Scotland, on behalf of said Board.

2. *District Board.*

Same as above, but instead of "General Board," &c., say, e.g., constituting the Roxburgh, Berwick, and Selkirk District Board of Lunacy.

If defenders, add address of office.

School Boards

constituted by the Education (*Scotland*) *Act*, 1872, 35 *&* 36 *Vict. c.* 62.

The School Board of the parish of X. in the county of Y.

The School Board of the burgh of X.

Fishery Boards.

[*Name and design members*], being members of the Fishery Board appointed in terms of and acting under the Fishery Board (Scotland) Act, 1882.

If defenders, add address of office.

Penalties are recoverable and offences prosecuted in name of clerk alone, as representing and on behalf of the Board.

Ecclesiastical Bodies.

1. *Church of Scotland.*

The Right Rev. A. B., LL.D., Doctor of Divinity, minister of the parish of X., moderator; the Very Rev. C. D., Doctor of Divinity [*designa-*

tion], principal clerk; and the Very Rev. E. F., minister of the parish of Y., depute clerk, and as representing the General Assembly of the Church of Scotland.

2. *Other Bodies*

must be called in full by their whole members.

3. *Kirk-Session.*

The Rev. A. B., D.D., minister of the church and parish of X., moderator of kirk-session; and C. D. [*designation*], E. F. [*designation*], &c., &c., elders, for themselves, and as constituting whole members of kirk-session of said church and parish.

4. *Presbyteries.*

Similar to kirk-sessions, by moderator and remanent member.

5. *Heritors.*

The heritors of the parish of X. in the county of Y.; and A. B. [*designation*], clerk to and as representing said heritors.

The heritors of the parish of X. in the county of Y.; and A. B. [*designation*], their clerk, as specially authorised to represent them in [*state proceedings*], conform to minute of meeting of said heritors of date 19 .

A. B. [*designation*], clerk and collector for the heritors and proprietors of lands and heritages in the parish of X. and county of Y., for collecting the assessment imposed by the heritors of said parish for repair and upkeep of the parish church and manse of said parish.

Quasi-Public Bodies.

Heriot's Trust.

The Governors of George Heriot's Trust, incorporated by and acting under a scheme prepared by the Commissioners appointed under the provisions of the Educational Endowments (Scotland) Act, 1882, and approved of by Order in Council dated 12th August 1885 [with consent of the Scottish Education Department].

Clyde Navigation Trust.

The Trustees of the Clyde Navigation, incorporated by the Clyde Navigation Consolidation Act, 1858.

Companies, Firms, Associations, and Institutions.

1. *Registered under Companies Acts.*

The A. B. Company, Limited, registered under the Companies Acts, and having the registered office of the Company at No. Street, X.

2. *Do. in Liquidation.*

By sec. 87 *of the Act of* 1862, *after a winding-up order has been pronounced by the Court, no action can proceed or be commenced against Company except with leave of Court.*

By secs. 94 *and* 95 *it is provided that the liquidator shall be described as "the official liquidator" of the particular Company, and not by his own name, and that he shall bring and defend actions in the name and on behalf of the Company.*

The A. B. Company, Limited, registered under the Companies Acts, and having the registered office of the Company at No. Street, and , the official liquidator thereof.

Incorporated Companies.

The A. B. Railway Company, incorporated by Act of Parliament [*and if defender, add*], and having the [*or* a] principal office of the Company at No. Street, X.

Chartered Companies or Institutions.

A. B. [*designation*], manager of the , and as such manager empowered by letters patent granted to said to sue on their behalf.

The Royal Infirmary of Edinburgh, incorporated by Royal Charter [*if defenders, add address if that does not sufficiently appear in the title*].

Registered under Building and Friendly Society Acts.

1. *Building Society Acts.*

The A. B. Association, registered under the (Scotland) Act, 19 , No. Street, X.

2. *Friendly Societies.*

A. B. and C. D. [*names only—no other designation required*], trustees of the Friendly Society [*or* Edinburgh Branch of the Friendly Society], registered under the Friendly Societies Act, 1875, and having the registered office [of said branch] at No. Street, X.

on behalf of said Society [*or* as trustees of said branch authorised to sue on its behalf].

If rules authorise suing by officers.

A. B., president, C. D., secretary [*no other designation required*], both of the Friendly Society, registered, &c. [*as above*], and as such president and secretary authorised by the rules of said society to sue on their behalf.

A member may sue the Society through any officer or person who receives contributions or issues policies within the jurisdiction.

A. B. [*designation*], a collector of the Friendly Society, registered [*&c., as above*], on behalf of said Friendly Society, *Defender.*

REGISTERED UNDER THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1894.

The A. B. Produce Company, Limited, registered under the Industrial and Provident Societies Act, 1894, Street, .

Unincorporated Companies, Committees, Clubs, and Firms.

NOTE.—*Section* 11 *of the Sheriff Courts Act*, 1907, *provides that "a corporation or association, or a firm nominate or descriptive, or a board corporate or unincorporate,* may be sued *under their nominate or descriptive name alone." The provision is merely permissive, and therefore in all cases, if it be deemed advisable, such companies, boards, or firms may still be sued in the manner competent prior to the passing of the Act. It may be doubted, and as yet there is no decision on the point, whether inferentially such companies, boards, or firms may competently sue under their nominate or descriptive names alone. In any event, the forms of instance competent prior to the passing of the Act are subjoined, and may still be used.*

1. *Social Name—Pursuers.*

John Smith & Company [*or* Brown, Smith & Company; *or* Brown, Smith & White], grocers and provision merchants, No. Street, Edinburgh.

2. *Defenders—Personal Liability of Partners Involved.*

Brown & Smith, stock and share brokers, No. Street, Edinburgh, and John Brown and William Smith, both stock and share brokers there, the individual partners of said firm, as such partners, and as individuals.

NOTE.—*In an action for a partnership debt, the Company as well as the partners must be called.*

John Smith, carrying on business as an ironmonger at No. Street, Edinburgh, under the firm name of Brown & White, and residing at No. Street, Edinburgh.

TRUSTEES FOR FIRM.

Action in Regard to Heritage where Property Held by Trustees for Firm.

A. B. [*designation*] and C. D. [*designation*], as trustees for and on behalf of their firm of B. & D. [*designation*] [and as individuals].

DESCRIPTIVE NAME.

The Edinburgh Furnishing Company, carrying on business as cabinet-makers and upholsterers at No. Street, Edinburgh, and A. B., C. D., and E. F., all cabinetmakers and upholsterers there, three of the partners of said Company.

or

A. B. [*designation*], carrying on business as the Edinburgh Grocery Stores at No. Street, Edinburgh, and the said Edinburgh Grocery Stores.

NOTE.—*In action for Company debt, Company must be called.*

DISSOLVED FIRM.

A., B., C. & Company, sometime grocers and provision merchants at No. Street, Edinburgh, now dissolved, and D. A. [*designation*], E. B. [*designation*], and F. C. [*designation*], the whole partners of said firm, as such partners, and as individuals.

COMMON LAW COMPANIES AND ASSOCIATIONS, &C.

Acting through Trustees.

A. B. [*designation*] and C. D. [*designation*], trustees nominated by and acting for and on behalf of the X. Fine Art Association [*address, if any*].

ASSOCIATIONS, CLUBS, &C.

The A. B. Football Club, and C. D. [*design*], president; E. F. [*design*], secretary; G. H. [*design*], treasurer; J. L. [*design*]; M. P. [*design*], &c., &c., members of committee, being the office-bearers of said club, and authorised to sue on its behalf, *Pursuers.*

or as the office-bearers of and representing said club, *Defenders.*

If members not numerous, sue all.

Individuals.

Persons Incapable of Suing.

1. *Pupil—Pursuer.*

Action cannot be raised in pupil's own name unless he has no guardians or they have adverse interest.

Father or tutor raising action on behalf of pupil may be found liable personally in expenses; see White, 21 *R.* 649.

(a) *Father.*

A. B. [*designation*], as father and administrator-in-law of his pupil son, C. B.

(b) *Mother.*

A. B. or C., residing at No. Street, Edinburgh, widow of D. C. [*designation*], as tutrix and administratrix-in-law of her pupil son, E. C.

Note.—*Mother cannot sue as long as father is alive.*

(c) *Tutors-nominate.*

A. B. [*designation*], C. D. [*designation*], and E. F. [*designation*], trustees nominated and appointed by and acting under the trust-disposition and settlement executed by the now deceased G. H. [*designation*], dated , and recorded in the Books of Council and Session on 19 , and as such trustees tutors nominated by the said trust-disposition and settlement to J. H., the pupil son of the said deceased G. H.

2. *Pupil—Defender.*

Action must be raised against guardians as well as pupil, either by name or generally.

(a) *Pupil with Tutors.*

A. B., residing at No. Street, Edinburgh, pupil son of the now deceased C. B. [*designation*], and also against D. E. [*designation*] and F. G. [*designation*], trustees nominated and appointed by and acting under the trust-disposition and settlement executed by the said C. B., dated , and recorded , and as such trustees tutors nominated by said trust-disposition and settlement to the said A. B.

A. B., residing at , pupil son of the deceased C. B. [*designation*], and E. D. or B., residing at , widow of the said C. B., and the mother and tutrix and administratrix-in-law of the said A. B.

(b) *Pupil without Tutors.*

A. B., residing at , pupil son of the deceased C. B. [*designation*], and tutors of the said A. B., if he any have.

3. *Insane Person—Pursuer.*

A. B., chartered accountant, Edinburgh, as *curator bonis* to C. D., sometime banker at X., now an inmate of the lunatic asylum at Y., conform to act and warrant of appointment by the Lords of Council and Session [*or* the Sheriff of], dated 19 .

Defender.

Against A. B., sometime banker in X., now an inmate of the lunatic asylum at Y.; and C. D., chartered accountant, Edinburgh, *curator bonis* to the said A. B., conform to, &c. [*as above*].

NOTE.—*An insane person cannot sue, and if he has no curator, an appointment of one must be made before the action can be raised.*

Where the insane person is to be defender and has no curator, the action may be raised against such person alone, but a curator must be appointed before it can proceed.

PERSONS UNDER PARTIAL INCAPACITY.

1. *Minor—Pursuer.*

He sues alone if he has no curators, or if they decline to consent or have adverse interest—otherwise the action should bear to be raised with their consent. If the action is raised in name of minor alone, either party may move for appointment of curator ad litem.

A. B., son of and residing with C. B. [*designation*], with consent and concurrence of the said C. B., as his curator and administrator-in-law.

A. B. [*designation*], with consent and concurrence of C. D. [*designation*], curator chosen by the said A. B., conform to act of curatory by the Lords of Council and Session, dated .

Defender.

Against A. B., residing at , son of the deceased C. B. [*designation*]; and D. E. [*designation*], curator and administrator-in-law of the said A. B.

Against A. B., residing at , and his curators, if he any have.

NOTE.—*As to personal liability of curators for expenses, see Fraser,* 19 *R.* 564.

2. *Married Woman—Pursuer.*

Sues in her own name, with consent of her husband, but she may sue without consent in cases where husband's jus mariti *and right of administration are excluded, or where wife has obtained judicial separation or protection order, and in consistorial actions. Where husband cannot consent, or unreasonably refuses, or has an adverse interest, the action may be raised in wife's name, and a curator* ad litem *applied for.*

A. B. or C., wife of and residing with D. C. [*designation*], with consent and concurrence of the said D. C., as her husband and administrator-in-law.

NOTE.—*As to personal liability of concurring husband for expenses, see Maxwell,* 3 *F.* 638; *but cf. also Whitehead,* 20 *R.* 1045.

Defender.

Against A. B. or C., wife of and residing with D. C. [*designation*], and the said D. C., as her husband and administrator-in-law, and for any right and interest he may have in the premises.

PERSONS IN REPRESENTATIVE CAPACITY.

NOTE.—*When suing the holder of an office in his representative capacity, the word "as" should always be used in the instance, otherwise it may be ambiguous as being a good description of the person individually.*

1. *Assignee.*

A. B. [*designation*], as assignee of C. D. [*designation*], conform to assignation by the said C. D. in his favour, dated 19 .

NOTE.—*If the title requires to be averred and proved, the particulars should be repeated in the condescendence.*

2. *Curator.—See Minor; Married Woman; Insane Person.*

3. *Executor.*

A. B. [*designation*], as executor of the deceased C. D. [*designation*], conform to confirmation by the Sheriff of , dated 19 .

4. *Passive Title.*

A. B. [*designation*], as executor of the deceased C. D. [*designation*], or as vitious intromitter with the goods, gear, and effects of the said C. D., or as representing him on one or other of the passive titles known in law.

MISCELLANEOUS.

1. *Clergymen.*

The Reverend A. B., minister of the parish of X., and residing at the manse, X.

The Right Reverend A. B., residing at , a clergyman of the Episcopal Church in Scotland, and commonly called the Bishop of .

2. *Procurator-Fiscal.*

A. B., as procurator-fiscal of the county of X. at Y.

A. B., as fiscal of the peace of the county of X. at Y.

3. *Shipowner.*

A. B. [*designation*], registered owner of [forty sixty-fourth part shares of] the steamship *Z.* of X. [*or* presently lying in the harbour of Y.].

BANKRUPT.

Has no title to sue if divested, except in cases of slander and personal injury.

JOINT OWNERS AND OBLIGANTS.

Joint owners must all sue, and must all be called as defenders. Joint obligants must all be called as defenders.

If the obligation is joint and several, they may be all sued together, jointly and severally, or one or more for the whole.

Insurance Policy, for Payment of.—*See* PAYMENT, No. 12.

Interdict.—*See also* BURIAL GROUNDS ACT; COMMON PROPERTY; DECLARATOR; GUARDIANSHIP; GABLE; LIQUIDATION; MASTER AND SERVANT; PROPERTY; PUBLIC HEALTH; SERVITUDE; SHIP.

NOTE.—*Interdict is seldom concluded for by itself, and as a rule the conclusion for interdict is combined with others for payment, reduction, or declarator. The act or course of action complained of must be illegal and wrongful, and though reasonable apprehension of injury from the commission of a wrongful or illegal act is sufficient, the pursuer must possess a title and interest of an appreciable kind to entitle him to object, and there must be proof either that the act has actually been committed, or that its commission is threatened, before interdict will be granted. Mere apprehension of possible evil is not a sufficient ground for craving interdict. The repetition*

of an act already committed may be interdicted, and the commission, continuance, or repetition of an act threatened or begun, but not completed, may be prevented. The crave for interdict must be timeous, that is, presented while it is possible for the respondent to obtemper the decree. Where matters are already inverted it is always open to the pursuer to obtain redress against the wrongful or illegal act of which he complains by declarator, removing, ejection, or by petition for redelivery.

The crave must be framed with great care, and must be expressed in terms which show clearly and unambiguously the specific act or acts which it is desired to prohibit, so that in the event of decree being granted in terms of the crave the respondent may know precisely what acts are and what acts are not permissible without committing a breach of interdict. The writ should always contain a crave for interim interdict, though in a defended action interim interdict may always be granted without any special crave to that effect. The action must be directed against a specified person or persons, since the decree affects only those respondents who are named therein.

1. Against Impeding Access.

(*See* DECLARATOR, No. 13, *omitting the declaratory conclusions.*)

2. Against Advertisement.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

M. D. & Co. [*designation*], *Defenders.*

The demand of the pursuer is—

For interdict against the defenders representing by advertisement or otherwise that pursuer was dismissed from defenders' service, and that he has no authority to collect money on behalf of defenders.

Therefore the pursuer craves the Court—

To interdict the defenders from advertising or otherwise representing that pursuer was dismissed from their service, and that he has no authority to collect money on their behalf; and to grant interim interdict; and to find defenders liable in expenses.

CONDESCENDENCE.

1. The pursuer is a commercial traveller. The defenders are wholesale merchants carrying on business at .

2. For over years prior to last the pursuer was the

representative of the defenders for the West of Scotland. In the beginning of 19 the two senior members of the firm retired, and Mr. , who had been the firm's representative in London, was assumed as a partner. Shortly thereafter the new partner commenced causelessly and vexatiously to interfere and find fault with the pursuer, with the object, as the pursuer believes, of forcing him to resign his position.

3. Failing in this object, however, the said Mr. , without assigning any reason therefor, dismissed the pursuer from the firm's service, and immediately thereafter caused an advertisement in the following terms to be inserted in a prominent part of the " " newspaper of and 19 , viz.:—[*Quote verbatim the advertisement complained of*].

4. The said advertisement was published with the intention, as pursuer believes and avers, of injuring his position in the eyes of those customers with whom he had been in the habit of dealing, and also of any other merchant to whom pursuer might apply for a situation. It implied that pursuer was a person who had collected or would collect moneys which he had no authority to receive. In fact, the pursuer had only very rarely, during his long connection with defenders' firm, collected accounts for them, and only then upon express instructions to that effect.

5. The pursuer at once applied to the defenders requiring them to withdraw the said advertisement and undertake not to repeat it, but this they decline to do. The said advertisement has already caused the pursuer great annoyance, and cannot fail, if repeated, to seriously affect his position and prospects, and for the loss and injury so caused the pursuer reserves his claim.

PLEA IN LAW.

The said advertisement being unwarranted and injurious to the pursuer, he is entitled to interdict, as craved.

3. Against Sale of Poinded Effects Claimed by Third Party.

Sheriffdom of at .

A. [*designation*], with the consent of B. [*designation*], *Pursuer*,

against

C. [*designation*], *Defender*.

The demand of the pursuer is—

For interdict against defender's selling, under a decree obtained by him on 19 against D. [*designation*], the furniture and effects of the said D. in the said house.

Therefore the pursuer craves the Court—

To interdict the defender, by himself or others, from selling, removing, or in any way interfering with the goods and effects, or any of them, belonging to the pursuer, and in the house occupied by the said D. at , under an alleged extract decree, dated [and in particular from selling, removing, or in any way interfering with—(1) a bedroom suite, 3 pieces, (2), &c.]; and to grant interim interdict; and to find the defenders liable in expenses.

CONDESCENDENCE.

1. On D. granted a trust-deed in favour of B. Under and in virtue of the powers conferred on him by said trust-deed, B. sold and delivered to pursuer, on , the household furniture and plenishing in the house occupied by D.

2. The defender on obtained decree in the Sheriff Court of at against D. for the sum of £ , and on said decree he on poinded the said household furniture and plenishing belonging to the pursuer.

3. The pursuer gave defender, and also the sheriff-officer who executed said poinding, notice that said household furniture and plenishing had been sold and delivered to him prior to the date of said poinding, but, in spite of said notice, defender has advertised a sale of same to take place on at o'clock, and this action is rendered necessary to preserve pursuer's rights.

PLEA IN LAW.

The defender having wrongfully poinded the pursuer's goods and effects in manner libelled, the pursuer is entitled to interdict, with expenses, as craved.

4. Against Pollution of Stream.

(*See* DECLARATOR, No. 8, *omitting the declaratory conclusions*; NUISANCE; POLLUTION.)

5. Against Interference with Water Supply.

Sheriffdom of at .

A. [*designation*], owner and occupier of the mill of M., on the river X., in the parish of Y. and county of Z., *Pursuer*,

against

B. [*designation*], owner and occupier of the mill of N., on the said river, in the parish and county foresaid, *Defender*.

The demand of the pursuer is—

For interdict against defender, by himself or others, from interfering with the bed of the river X., so as to alter or obstruct the present flow of the water therein to pursuer's prejudice.

Therefore the pursuer craves the Court—

To interdict the defender, by himself or others, from excavating, altering, or in any way interfering with the present bed of the dam of the river X., immediately above pursuer's and defender's said mills; from altering, enlarging, or deepening the sluice leading to defender's said mill from the said dam, and from carrying out any operations that may change the present flow of water; and from withdrawing any water from said dam, or allowing any water to pass therefrom through his said sluice at any time except when the said dam is full, and the water therein either standing level with the damhead or running over; and to grant interim interdict; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is owner and occupier of the M. mill under [*state titles shortly*]. The defender is owner and occupier of the N. mill. Both of said mills are situated on the river X., nearly opposite each other, and both draw their supply of water from the same dam.

2. Under his title the pursuer has the sole right to the water in the said dam, subject only to any postponed rights in the second and third water accruing to the N. mill. [*Illustrate from titles or prescriptive custom.*]

3. The defender has at various times, without the consent or previous knowledge of the pursuer, made various unwarranted alterations and enlargements on his sluice and relative works, and has made them capable of withdrawing, and they are now withdrawing, a greater quantity of water from the said dam than he is legally entitled to, all to the prejudice of the pursuer. In particular [*specify occasions; or*, said alterations have been done secretly, without any previous intimation to pursuer, who is therefore unable to condescend on the dates thereof]. Further, the pursuer believes and avers that the defender has in contemplation additional alterations and enlargements [*specify grounds of belief*]. Further, the defender, although he has only a limited right to the third water, has occasionally during the last two years, and in particular on or about the following dates , allowed his wheel to work and draw off water at times when there was not a sufficient flow of water in the said dam to first serve the pursuer's mill, and the pursuer has been seriously prejudiced thereby. The occasions on which

the defender has done this have increased of late, and the pursuer believes that, unless interdict is granted, the defender will continue to do so.

4. In spite of the remonstrance of the pursuer, the defender continues his encroachments on the rights of the pursuer, who accordingly finds it necessary to apply to the Court for interdict. The pursuer reserves all other rights, including claims of damages, competent to him.

PLEA IN LAW.

The defender not being entitled in law to do the acts complained of, interdict should be granted, with expenses, as craved.

6. For Declarator of Common Property and Interdict against Interference with Same.

(*See also* COMMON PROPERTY.)

Sheriffdom of at .

A. [*designation*], proprietor of the house, No. Street, , *Pursuer*,

against

B. [*designation*], proprietor of the house, No. Street, , adjoining that of pursuer, *Defender*.

The demand of the pursuer is—

For declarator that the passage running from , between pursuer's and defender's said houses, is the property *pro indiviso* of pursuer and defender, and for interdict against defender's obstructing or impeding pursuer's access thereby.

Therefore the pursuer craves the Court—

To find and declare that the entry or passage running from , between the said properties of the pursuer and defender, and leading into the court at the back of the pursuer's said property, is the common property of the pursuer and the defender, and for their common use and enjoyment: To interdict the defender from building on or over said entry or passage, or obstructing or occupying the same in any way so as to defeat or impede the pursuer's rights: To grant interim interdict: To ordain the defender forthwith to take down the wall and other erections made by him on or over said entry or passage, and to remove said wall, erections, and all materials or other articles brought by him to said entry without consent of the pursuer;

and failing the defender doing so within such period as the Court shall appoint, to grant warrant to the pursuer to have the same done at the cost of the defender: To grant a decree against the defender for payment of the amount of said cost as it may be fixed by the Court; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The entry or passage in dispute has been possessed and used by the pursuer and his authors from time immemorial under their titles, as the common property of the pursuer and the defender and their respective authors, for their common use and enjoyment.

2. On [*date*] the defender, without any notice to the pursuer, proceeded to erect, and is in course of erecting, a wall across said passage, which, when completed, will obstruct the passage and defeat the pursuer's rights as aforesaid.

3. The pursuer has called upon the defender to desist from building said wall and conducting said operations, or from encroaching upon said passage, but he has refused to do so, and has brought a large amount of building materials into said passage, and is proceeding with the building of said wall. The present action has thus been rendered necessary.

PLEAS IN LAW.

1. The ground in question being the common property of the pursuer and the defender, for their common use and enjoyment, the pursuer is entitled to declarator accordingly.

2. The defender having interfered with the pursuer in the enjoyment of his rights, the pursuer is entitled to interdict as craved.

3. The defender having wrongfully commenced building operations on ground which is the common property of the pursuer and the defender, without the consent of the pursuer, the pursuer is entitled to decree of removal and restoration as craved.

7. Against Operations Contrary to Lease, and for Payment of Damages, &c.

Sheriffdom of at .

A. [*designation*], owner of the lands of X., and of the coal-pit or colliery thereon known as the X. pit, in the parish of Y. and county of Z., *Pursuer*,

against

B. [*designation*], lessee of said coal-pit, *Defender*.

The claim and demand of the pursuer is—

For interdict against defender's interfering with the water-pipes required for pumping said coal-pit or from removing the machinery and plant used in working the same; for payment by defender of £1691, 13s. as damages; and for a decree ordaining defender to keep down the water in said pit by continuous pumping, and failing his doing so, for decree authorising pursuer to do so at defender's expense; and for expenses.

Therefore the pursuer craves the Court—

To interdict the defender from drawing, removing, or interfering with the water-pipes required for pumping water from the said colliery, and from removing the machinery and plant used for the proper working of said colliery; and to grant interim interdict: To grant a decree against the defender for payment to the pursuer of (1) £316, 13s.; (2) £375; and (3) £1000: To ordain the defender to keep down the water in said colliery by continuous pumping therefrom, and, failing his doing so, to authorise the pursuer to enter upon said colliery and pump the accumulating water therefrom at the defender's expense; and to find the defender liable in expenses.

CONDESCENDENCE.

1. By minute of lease, dated , between the pursuer and the defender, the defender leased the said colliery from the pursuer for years at a fixed annual rent of £100, or, in the option of the pursuer, on payment of a lordship of 4d. per ton for house coal excavated.

2. Mining operations commenced on , and have continued without interruption since that date. 19,000 tons of house coal have been taken out, the lordship on which at 4d. per ton amounts to £316, 13s., the sum first sued for. The defender refuses or delays to make payment of this sum to the pursuer.

3. The defender by his working of said colliery has deposited blaes on the pursuer's land, and damaged same to the extent of 2½ acres, and in terms of said lease the defender is bound to restore same or pay therefor at the rate of £150 per acre, amounting to £375, the sum second sued for. This the defender refuses or delays to do.

4. The said lease does not expire for a year from the date of raising the present action, but defender has already partially removed, and has given instructions to remove, the water pipes and whole plant required for the working of the colliery. Were this done, and pumping operations discontinued as proposed by the defender, the colliery would be irre-

trievably ruined and the coalfields belonging to the pursuer destroyed. The defender, by the terms of his lease, is bound to equip and work the colliery in an efficient way continuously till the expiry of his lease, and to leave same in first-class working order. In spite of the remonstrance of the pursuer, the defender still continues to dismantle the colliery.

5. By the discontinuance of the work of pumping, the colliery and coalfield belonging to the pursuer has already suffered damage to the extent of at least £1000, the sum third sued for, payment of which the defender refuses or delays to make.

PLEAS IN LAW.

1. The defender having failed to pay to the pursuer the lordship on the coal extracted, and having damaged the pursuer's fields, the pursuer is entitled to decree for the sums first and second sued for.

2. The defender having ceased mining operations, contrary to the terms of his lease, and having refused to keep down the accumulating water in the colliery by pumping it therefrom, the pursuer is entitled to an order ordaining him to do so, or entitling the pursuer to do so at the defender's expense; he is also entitled to damages to the amount third sued for.

3. The defender having removed some of his plant, and being in process of removing the remainder of the plant required for the proper equipment of the colliery, the pursuer is entitled to interdict as craved.

8. Against Nuisance of Noise.

Sheriffdom of at .

A. [*designation*], *Pursuer*,
against
B. [*designation*], *Defender*.

The demand of the pursuer is—

For interdict against defender working the engine and crushers in his said premises so as to cause a nuisance to pursuer.

Therefore the pursuer craves the Court—

To interdict the defender from working the engine and crushers in his said premises in such a way as by the noise and vibration occasioned thereby to cause material discomfort and annoyance, and to be a nuisance to the pursuer and the inmates of his said house and premises: To grant interim interdict; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is proprietor and occupier of the property at , which is used by him as a dwelling-house. He also lets a portion of the dwelling-house to visitors.

2. The defender is the proprietor of the property at , in which he carries on the business of a grain merchant and threshing-mill owner. Said property immediately adjoins the property of pursuer.

3. In his said premises the defender has erected and uses a gas-engine and crushers for the purpose of bruising oats, splitting beans, and breaking cake.

4. The noise and vibration in pursuer's premises while the engine and crushers are working constitute an intolerable nuisance, and are most irritating and distracting to the pursuer and the inmates of his house, and injurious to their health. Further, the vibration caused by the engine is causing, and will cause, injury to pursuer's property. He has been prevented letting his rooms to visitors in consequence of the noise and vibration caused by said engine and crushers, and has thus incurred considerable loss.

5. The pursuer has remonstrated with the defender, but the defender has failed to remedy the nuisance, and the pursuer has found it necessary to apply for interdict. The pursuer reserves all claims competent to him for damages occasioned by the existence of the said nuisance.

PLEA IN LAW.

The noise and vibration caused by said machinery being a nuisance and causing material discomfort and annoyance to the pursuer, and being injurious to the health of the pursuer and the inmates of his house, and to his property, he is entitled to interdict as craved.

9. Against Infringement of Copyright.

(*See* INFRINGEMENT, No. 1.)

10. Against Infringement of Patent.

(*See* INFRINGEMENT, No. 3.)

11. Against Infringement of Trade Mark or Trade Name.

(*See* TRADE MARK.)

12. Against Canvassing for Orders.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For interdict against defender canvassing for orders for woollen fabric suitable for pyjamas or shirting within a radius of twenty miles from Glasgow Cross.

Therefore the pursuer craves the Court—

To interdict the defender from directly or indirectly, on behalf of himself or others, canvassing or soliciting orders for woollen fabric or cloth suitable for the manufacture of pyjamas or shirts from any person or persons carrying on business within a radius of twenty miles from Glasgow Cross, and to grant interim interdict; and to find defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is a manufacturer of woollen cloth or fabric which is specially suited for making up into pyjamas or shirts.

2. The defender, who is a commercial traveller, entered pursuer's service on , under a contract dated herewith produced, by the terms of which, *inter alia*, it was agreed that defender should do his utmost while in pursuer's service to push the trade in the woollen cloth manufactured by pursuer, and that on the termination of his service for any reason he would not, either as a traveller for some other person or as a principal, canvass or solicit orders for cloth similar to that manufactured by pursuer either in the city of Glasgow or within a radius of twenty miles from Glasgow Cross.

3. The defender was dismissed from pursuer's service on .

4. Since his dismissal the pursuer has discovered that defender, as traveller for Messrs. X. Y. & Co., woollen cloth manufacturers in Hawick, has visited the customers of pursuer in Glasgow and the immediate neighbourhood with the object of inducing them to purchase the cloth manufactured by Messrs. X. Y. & Co. in preference to that of pursuer. In particular [*give dates and names of persons from whom orders were solicited*].

5. The pursuer believes that in consequence of defender's representations several of his customers have been induced to buy the cloth manufactured by Messrs. X. Y. & Co., and pursuer has thereby suffered damage for which he meantime reserves his claim against defender.

PLEA IN LAW.

The defender having, in violation of the contract between him and pursuer, solicited, directly or indirectly, former customers of pursuer for orders, and such solicitations being to the prejudice of pursuer, he is entitled to interdict as craved.

13. Against Railway Company Entering upon Lands.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

The North British Railway Company, Waterloo Place, Edinburgh, *Defenders.*

The demand of the pursuer is—

For interdict against the defenders entering or trespassing upon the pursuer's farm of X., or from excavating therein, or interfering therewith.

Therefore the pursuer craves the Court—

To interdict the defenders, their workmen, and all others employed by them, and for whom they are responsible, from entering or trespassing upon the lands of the pursuer's farm of X., situated in the parish of Y., and from cutting up or excavating the same or any part thereof, and to grant interim interdict; and to find the defenders liable in expenses.

CONDESCENDENCE.

The pursuer is tenant and occupant of the farm of C., situated in the parish of I., through which the defenders intend to make their railway, and they have commenced to do so by entering upon, cutting up, and excavating portions of the lands of the pursuer's said farm, without due notice to him, and without acquiring from him, or making the necessary statutory arrangements with him for acquiring, the lands which they intend to acquire for their line.

PLEA IN LAW.

The defenders not having made the necessary statutory arrangements with the pursuer for acquiring the lands which they intend to acquire for their line, the pursuer is entitled to interdict, &c., as craved.

14. To Interdict Mineral Tenant from Working Minerals to Surface Detriment.

Sheriffdom of at .

A. B. [*designation*], proprietor of the lands of X. in the parish of Y. and county of Z., *Pursuer*,

against

C. D. [*designation*], lessee of the X. coalfield, *Defender*.

The demand of the pursuer is—

For interdict against defender working coal or other mineral lying underneath that part of the pursuer's said lands of X. after described.

Therefore the pursuer craves the Court—

To interdict the defender from working the coal or other minerals lying beneath that part of the pursuer's lands of X. known as Y. farm, and delineated and coloured red on a plan signed as relative to the lease entered into between pursuer and defender, dated , and to grant interim interdict; and to find the defender liable in expenses.

Condescendence.

1. By lease entered into between the pursuer and defender, dated , the pursuer leased to defender the coalfield known as the X. coalfield for years, all as delineated on the plan signed as relative thereto and herewith produced along with said lease.

2. By the terms of said lease it was, *inter alia*, provided that in searching for, winning, or carrying away the coal or other minerals lying in said coalfield the defender should not, by himself or others, conduct his operations beneath that portion of the pursuer's lands of X. known as the Y. farm in such a manner as to be detrimental to the surface thereof or to the interests of the pursuer as the proprietor of the surface of said farm.

3. The defender, in the course of his operations in working the coal beneath the said farm lands, has [*describe surface damage*].

4. The defender, in spite of pursuer's repeated remonstrances, refuses to desist from his operations, and the buildings and outhouses on pursuer's farm are being seriously impaired thereby.

Plea in Law.

The defender being in virtue of said lease bound to work the coal beneath the said lands of Y. so as not to injure the surface thereof, and

the defender's operations complained of having caused, and being likely to cause, such damage, pursuer is entitled to decree, with expenses, as craved.

15. Against Trespass.

Sheriffdom of at .

A. B. [*designation*], proprietor of the lands of X. in the parish of Y. and county of Z., *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For interdict against the defender's trespassing upon any part of the pursuer's said lands.

Therefore the pursuer craves the Court—

To interdict the defender from trespassing upon any part of the pursuer's lands of X., and to grant interim interdict; and to find the defender liable in expenses, in the event of his offering opposition hereto.

CONDESCENDENCE.

1. The pursuer's mansion-house is situated about a mile from the village of X., and is surrounded by pleasure-grounds of considerable extent.

2. The pursuer has been in the habit of allowing the residenters in the immediate neighbourhood, and strangers visiting the village of X., the privilege of walking through his policies.

3. Lately the pursuer has been greatly annoyed by the conduct of those to whom this privilege has been extended, owing to their conducting themselves noisily and in an unseemly manner, and by scattering bits of paper and broken bottles about the grounds, and he has been compelled to withdraw the privilege of allowing visitors to inspect his grounds and of walking therein.

4. Notwithstanding that pursuer has intimated publicly, and by notice-boards, that the policies are strictly private, bands of young men and women continue to annoy pursuer and his family by walking through the policies.

5. On or about the pursuer's gamekeeper intimated to defender that it was no longer permissible for him to walk in said grounds, and that if he found him there again he would turn him out. Defender, however, replied that "he didn't care, and that he had as much right there as anybody else."

6. Notwithstanding said warning, defender persists in trespassing on said policies, and the present action has become necessary.

PLEA IN LAW.

The defender having trespassed on pursuer's said lands as condescended on, pursuer is entitled to decree as craved.

16. Against Use of Road.

(*See* DECLARATOR, No. 7, *omitting the declaratory conclusions.*)

17. Against Interference with Subjects of Hypothec.

Sheriffdom of at .

A. B. [*designation*], *Pursuer,*
against
E. F. [*designation*], *Defender.*

The demand of the pursuer is—

For interdict against the defender, by himself or others, from interfering with the stock and effects in the premises, No. X. Street, Y., occupied now or formerly by C. D. [*designation*].

Therefore the pursuer craves the Court—

To interdict the defender, by himself or others, from selling or otherwise interfering with the stock and other effects in the premises situated at No. X. Street, Y., now or lately occupied by the said C. D., which are subject to the pursuer's right of hypothec until he pays or finds caution for £25, to become payable by the said C. D. to the pursuer for the half-year's rent of said premises at Whitsunday 19 ; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is heritable proprietor of the shop and cellars and other premises situated in X. Street, Y., now or formerly occupied by the said C. D. as tenant thereof under the pursuer.

2. The pursuer let to the said C. D. the said premises for one year, from Whitsunday 19 to Whitsunday 19 at the yearly rent of £50, payable half-yearly in equal portions at the terms of Martinmas and Whitsunday respectively.

3. The half-year's rent payable at Martinmas 19 was duly paid, but the current half-year's rent, amounting to £25, payable at Whitsunday 19 , has not been paid or provided for.

4. The defender, on , executed a poinding of the whole moveable effects belonging to the said C. D. within or upon the said premises, under diligence at his instance against the said C. D., and a warrant of sale has now been obtained by the said E. F. to sell the said pointed effects [*or*, a sale of the effects so pointed has been advertised to take place at the instance of the said E. F. on].

5. The pursuer's right of hypothec for the current half-year's rent is thus in danger of being defeated or prejudiced.

PLEA IN LAW.

The pursuer, as landlord of said premises, being entitled to have them plenished in security of the half-year's rent, and said hypothec being in danger of being defeated by the defender's actings, pursuer is entitled to decree, with expenses, as craved.

18. Against Misapplication of Funds of an Association.

Sheriffdom of at .

A. B. [*designation*], a member of the defender's association, *Pursuer*,

against

A. B. [*designation*], C. D. [*designation*], and E. F. [*designation*], the trustees of the X. Fine Art Association, Street, , *Defenders.*

The demand of the pursuer is—

For interdict against the defenders dividing or otherwise disposing of the funds of said association save for the purposes connected with the carrying on thereof.

Therefore the pursuer craves the Court—

To interdict the defenders from dividing the funds of said association among the members thereof, or from interfering with or disposing of the same except for the purpose of carrying on the said association, and to grant interim interdict; and to find the defenders, personally and jointly and severally, liable in expenses.

CONDESCENDENCE.

1. The said association was formed for the purpose of encouraging an interest in the fine arts. A copy of the rules is herewith produced.

2. The funds of the association, which are vested in the defenders as trustees, amount to about £ . The defenders have recently intimated that they purpose to wind up the association and to divide

the funds among the members. Such a resolution is *ultra vires* of the defenders, and is not sanctioned by the rules.

3. As the association is in a flourishing state, the pursuer and other members of the association have protested against this resolution of the trustees, and they have called upon them to convene a public meeting of the members to have the matter discussed.

4. Notwithstanding said protest, pursuer believes the trustees persist in their intention of dissolving the society, and the protection of the Court has become necessary in the interests of the association.

PLEA IN LAW.

The defenders having intimated that they propose, illegally and unwarrantably and in inversion of the objects of the association, to distribute or alienate its funds, the pursuer, as a member of said association, is entitled to decree, with expenses, as craved.

19. Against Encroachment on Property and for Restoration.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For interdict against the defender from encroaching upon pursuer's property at No. Street, , by the erection of a wall thereon; and to ordain defender, within such time as the Court may appoint, to remove all stones and other articles deposited on pursuer's property, and to restore the same to its former condition.

Therefore the pursuer craves the Court—

To interdict the defender from encroaching in any way upon pursuer's property, forming No. Street, , by the erection of a wall on the eastern side thereof, and to grant interim interdict: To ordain defender, within such time as the Court may appoint, to remove all stones and other articles deposited on pursuer's said property, and to restore the same to its former condition: failing defender's doing so, to authorise pursuer to do so, and to grant a decree against defender for payment to the pursuer of the expense thereby occasioned; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer and defender occupy adjacent villas, which are and have been separated from each other by a hedge.

2. The defender has recently begun to build a wall between the two plots of ground, in the construction of which he has encroached on ground belonging to pursuer to the extent of at least nine inches, as will be seen by a reference to the feu contract and relative plan herewith produced.

3. The defender maintains that the hedge which separates the properties did not, and does not, accurately define the line of march, and that the boundary line between the properties, along which he is entitled to build the said wall, is really nine inches on the side of the hedge nearer pursuer's plot.

4. The pursuer has requested defender to desist from the building of said wall, but defender declines to do so.

PLEA IN LAW.

The defender having encroached upon pursuer's property as condescended on, the pursuer is entitled to decree, with expenses, as craved.

Interdict, Breach of.—*See The Practice of the Sheriff Court*, pp. 450-2.

For Breach of Interdict against Infringement of Patent.

Sheriffdom of at .

A. [*designation*], with the concurrence of M., Procurator-Fiscal of , *Pursuer*,

against

B. [*designation*], *Defender*.

The complaint of the pursuer is—

That notwithstanding that defender was, by decree of this Court dated , interdicted from infringing pursuer's invention for improvements in rubber tyres by manufacturing or selling tyres exactly similar in construction, the defender has, in violation of said interdict, and in contempt of Court, again infringed the said patent.

Therefore the pursuer craves the Court—

To appoint the defender to appear personally before the Court, at such diet as it shall appoint, to answer to the charge against him set forth in this petition; and failing his appearance at such

dict, to grant warrant to officers of Court to apprehend the defender and bring him before the Court to answer as aforesaid; and on the charge being admitted or proved, to fine him in the sum of £50 sterling, or in such other sum as the Court shall determine; or otherwise, or failing payment of such fine, to commit him to prison for such period as the Court shall appoint [To grant warrant to officers of Court to take possession of all instruments, apparatus, goods, or articles in the hands of the defender or under his control, made according to, or in the manner described in, the letters patent, the property of the pursuer, dated and numbered , for the invention of improvements in rubber tyres, and relative specifications, or in manner substantially the same, or otherwise in infringement of said letters patent, and also of all letters, books, and other documents relating to the said infringing articles or apparatus in the custody of or under the control of the defender, to destroy or otherwise dispose of the same as the Court may direct: To authorise execution to pass on a copy of the interlocutor to follow hereon, certified by the sheriff-clerk: To ordain the defender to find caution against his again manufacturing or selling rubber tyres in breach of the said interdict granted by the Court]; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is proprietor of the letters patent dated and numbered for the invention of improvements in rubber tyres. On , it came to the knowledge of the pursuer that the defender had been infringing this patent by manufacturing and selling tyres exactly similar in construction to those of the pursuer. The pursuer accordingly presented a petition in this Court on , praying that the defender might be interdicted from infringing said letters patent. Answers were lodged by the defender, and, after a proof, decree was granted in terms of the prayer of the petition, and the following interlocutor was pronounced [*quote*]. The said interlocutor was intimated to the defender on .

2. It has come to the knowledge of the pursuer that, notwithstanding said interlocutor granted against him, the defender has again illegally, and in breach of said interdict, infringed the said patent. In particular [*specify precisely instances of breach*].

3. The pursuer is accordingly obliged, with the concurrence of the procurator-fiscal, to make the present application to the Court, in order

that the authority of the Court may be vindicated and the rights of the pursuer protected.

PLEA IN LAW.

The defender, having wilfully disobeyed and disregarded the interdict granted by the Court, ought to be punished for the contempt of Court thereby committed.

In respect whereof.

I concur.

[*Signed by Procurator-Fiscal.*]

[*Address and date.*]

Inventory.—*See* CURATORS; POINDING; SEQUESTRATION; SHIPPING.

I.O.U.

NOTE.—*An I.O.U. is a simple acknowledgment of indebtedness, and is good evidence of the sum being due. But if action be raised for the amount, it should conclude simply for payment of the sum lent, and not, as in the case of a bill, for the sum "due by bill dated, &c." The action is therefore an ordinary one for the payment of money, the I.O.U. being used as an adminicle of evidence.*

Irregular Marriage, for Warrant to Register.—*See* MARRIAGE.

Irritancy.—*See* AGRICULTURAL HOLDINGS ACT; DECLARATOR, NOS. 4, 5; ENTAIL; IMPLEMENT; LEASE; REMOVING.

Joint Adventure, Accounting for.—*See* ACCOUNTING, No. 4.

Joint Property.—*See* COMMON PROPERTY.

Judgments Extensions Act, Proceedings under.

NOTE.—*Under these Acts decrees obtained in one part of the United Kingdom may be enforced against parties residing in another. All that is required is to obtain a certificate in terms of the Acts, to endorse thereon a minute or note in the form prescribed by the Act according as the judgment*

is that of a superior or inferior Court, and to present the certificate for registration in the special register kept for such judgments.

Where more than a year has elapsed from the date of an inferior Court judgment, it cannot be put to execution under the Act.

Judicial Factor.—*See* FACTOR.

Jurisdiction, Arrestment to Found.—*See* ARREST-MENT.

Jury.—*See* APPEAL; LANDS CLAUSES ACT.

Jury Trial.—*See* MOTIONS.

Jus Relictæ, for Payment of.—*See* SUCCESSION.

Kenning to the Terce.—*See* SERVICE, SPECIAL, No. 15.

Landlord.—*See* HOUSE; HYPOTHEC; INSPECTION; LEASE; REPARATION.

Lands Clauses Acts.—*See also* ACCOMMODATION WORKS; RAILWAY CLAUSES ACTS.

1. For Appointment of Valuator (s. 9).

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

The M. N. Railway Company, incorporated by Act of Parliament, *Defenders.*

The demand of the pursuer is—

For the nomination of an arbiter, under sec. 9 of the Lands Clauses Consolidation (Scotland) Act, 1845, to determine the value of the piece of land forming part of the entailed lands and estate of X. in the county of Y., of which the pursuer is heir of entail in possession, which the defenders have intimated they intend to acquire for the purposes of their said railway.

Therefore the pursuer craves the Court—

To nominate a valuator for determining the value of that piece of land [*describe the land proposed to be acquired as in Notice to Treat and by reference to plan*], being part of the entailed lands of X., belonging to the pursuer, which the defenders have intimated, by notice to treat dated , they intend to acquire for the purposes of their undertaking: To appoint the sum fixed by such valuator as the value of the said land to be deposited by the defenders in bank for the benefit of all parties interested therein, thereafter to be dealt with by the Court in terms of the Lands Clauses Consolidation (Scotland) Act, 1845; and to appoint the defenders to lodge the deposit-receipt for said sum with the Clerk of Court.

Condescendence.

1. The pursuer is heir of entail in possession of the entailed lands and estate of X. in the county of Y., of which the piece of land described in the prayer of the petition forms part. The defenders are the M. N. Railway Company, incorporated by Act of Parliament.

2. By the M. N. Railway Act, 19 , the defenders are authorised to construct a railway from M. to N., and passing through the pursuer's said estate of X.

3. By notice to treat, dated and served , the defenders intimated to the pursuer that they required to take for the purposes of the said railway the lands and others therein described, being the lands described in the prayer of the petition.

4. As the said lands form part of the said entailed estate of X., the pursuer is unable to convey them to the defenders, except under and in accordance with the provisions of the Lands Clauses Consolidation (Scotland) Act, 1845.

5. By sec. 7 of the said Act it is provided [*quote section*].

6. By sec. 9 of the said Act it is provided [*quote section*].

7. By deed of nomination, dated and , the parties nominated and as valuators to determine the value of the said piece of land. The said and have been unable to agree as to the value thereof, and the present action has thus been rendered necessary.

Plea in Law.

The valuators nominated by the parties having failed to agree, the value of said land falls to be fixed by a valuator appointed by the Court.

2. For Certificate that Capital has been Subscribed (under s. 16).

Where an undertaking is to be carried out by means of a subscribed capital, the promoters are not entitled to put in force the powers of compulsory purchase conferred upon them until the capital has been subscribed. When the capital has been subscribed, application is made to the Sheriff for a certificate to that effect. The certificate granted by the Sheriff is only open to challenge on the ground of fraud.

Sheriffdom of at .

A. B., &c. [*designations of promoters*], *Pursuers.*

The demand of the pursuers is—

For a certificate that the whole of the estimated capital for defraying the expenses of their undertaking has been subscribed.

Therefore the pursuers crave the Court—

To grant a certificate to the pursuers, certifying that the whole of the estimated capital for defraying the expenses of their undertaking, as prescribed by their Act of Parliament, and Edward VII. c. , has been subscribed under contract, binding the parties thereto, their heirs, executors, and administrators, for payment of the several sums subscribed by them respectively.

CONDESCENDENCE.

1. The pursuers are the promoters of the Act and Edward VII. c. , by which they are authorised to [*set out briefly the purposes of the Act*].

2. By sec. of the said Act it is provided [*quote section providing as to capital*], *or* by sec. 15 of the Lands Clauses Consolidation (Scotland) Act, 1845, it is provided [*quote section*].

3. The whole of said capital has been subscribed, in accordance with the provisions of the said section. A list, giving the names of the subscribers and the amounts subscribed by each, is herewith produced and referred to.

PLEA IN LAW.

The whole capital of the undertaking having been subscribed, in terms of the statute, the pursuers are entitled to a certificate, as craved.

3. To Settle Compensation where Amount Claimed Less than £50 (under s. 22).

NOTE.—*Where the total amount claimed does not exceed* £50, *the amount of compensation falls to be assessed by the Sheriff. Either party may apply.*

There are no written pleadings, and the evidence is not reduced to writing. The expenses of the inquiry, except the remunerative expenses of the Sheriff, are in the discretion of the Sheriff. The determination of the Sheriff, both as to compensation and expenses, is "final and conclusive, and not subject to review or appeal in any form or Court whatever."

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

The M. N. Railway Company, incorporated by Act of Parliament, *Defenders.*

The demand of the pursuer is—

For a determination of the amount to be paid by defenders to pursuer as compensation for having compulsorily taken certain lands belonging to the pursuer, consisting of [*describe subjects*], in terms of sec. 22 of the Lands Clauses Consolidation (Scotland) Act, 1845.

Therefore the pursuer craves the Court—

To appoint a diet for the trial of the cause: To fix and determine, in the manner provided by said Act, the amount to be paid by the defenders to the pursuer in respect of his claims against the defenders; and to decern against the defenders for payment thereof, with expenses.

CONDESCENDENCE.

1. By notice to treat, dated , and served upon the pursuer on , the defenders intimated that a piece of ground therein described was required and would be taken by them for the purposes of their railway, under and in pursuance of the M. N. Railway Act, 19 . By said notice the defenders also demanded from the pursuer the particulars of his interest in the said piece of ground and the amount of the claim made by him in respect thereof. The said notice and relative plan are produced herewith.

2. By statement and claim, dated , the pursuer intimated to the defenders that the ground described in the said notice [*state shortly the contents of statement and claim*]. By said statement and claim the pursuer further requested the defenders, in the event of their not acquiescing in the said claim, to concur with him in having the same settled by arbitration.

3. The defenders have now intimated to the pursuer that they are not willing to pay the amount claimed by him, and in respect that the

total amount claimed does not exceed £50, that they decline to concur in the mode of settlement proposed by him.

4. By sec. 21 of the Lands Clauses Consolidation (Scotland) Act, 1845, it is enacted [*quote section*].

PLEA IN LAW.

The total amount of compensation claimed by the pursuer from the defenders being less than £50, the sum payable falls to be determined by the Court.

Settlement of Compensation by Jury.

NOTE.—*When the landowner elects to have the amount of the compensation payable to him assessed by a jury, the Company, unless they are willing to pay the full sum demanded, must within twenty-one days of the receipt of the claim present a petition to the Sheriff for the summoning of a jury.*

Before presenting this petition the Company must give not less than ten clear days' notice of their intention to do so, which notice must contain a statement of the sum the Company are willing to pay as compensation. Failure to give this notice makes the Company's petition a nullity, and subjects the Company to payment of the whole sum claimed.

Either party, if they so desire it, may have the questions between them decided by a special jury. In this case the petition to the Sheriff must pray for the summoning of a special jury.

Where the claim lodged is not in conformity with the statute—if, for example, it contains a demand for something which a jury cannot competently give—the best course for the Company would appear to be to give notice and present their petition, and then to raise a suspension and interdict against the trial being proceeded with. In this way the Company save themselves from the consequences of default should it ultimately be decided that their contentions are unsound. In such cases both the notice and the petition should bear to be under protest and reservation of all pleas competent to the Company against the validity of the claim.

4. For Summoning of Jury (s. 36 and 53).

Sheriffdom of at .

The M. N. Railway Company, incorporated by Act of Parliament, *Pursuers*,

against

A. B. [*designation*], *Defender*.

The demand of the pursuers is—

For the summoning of a [special] jury in the manner provided by the Lands Clauses Consolidation (Scotland) Act, 1845, to assess

the compensation to be paid to the defender in respect of certain lands belonging to defender compulsorily taken by the pursuers, consisting of [*describe subjects*].

Therefore the pursuers crave the Court—

To nominate and summon a [special] jury in the manner provided by the said Act to assess the amount of compensation to be paid to the defender in respect of the compulsory acquisition by pursuers of the said lands: To pronounce judgment for the amount of compensation so assessed, and also to pronounce such other orders, deliverances, or decrees as may be necessary for the purpose of enforcing and securing the rights of parties [but reserving always to the pursuers their whole objections to the competency or regularity of the foresaid claims and relative requisition for trial by jury and whole procedure following thereon or connected therewith]; and to find the defender liable in one-half of the expenses of this application, all in terms of the said Lands Clauses Consolidation (Scotland) Act, 1845.

CONDESCENDENCE.

1. By the M. N. Railway Act, 19 , with which is incorporated the Lands Clauses Consolidation (Scotland) Act, 1845, the pursuers are authorised to construct a line of railway [*state shortly the purpose of the Act*].

2. By notice to treat, dated and served , the pursuers gave notice to the defender, as owner or reputed owner of the estate of X., that [*state contents of notice to treat*]. Copies of the said notice and relative plan are produced herewith.

3. In compliance with the said notice to treat, the defender on served upon the pursuers a statement and claim [*state shortly the substance thereof*]. The said statement and claim is produced herewith.

4. By notice and tender, dated , the pursuers, on the narrative of the said notice to treat and statement and claim, and on the further narrative [that the pursuers, for the reasons stated in the said notice and tender, did not admit the statements made in the said claim, and protested that the said claim and requisition for trial by jury therein contained were incompetent, and that the defender should be held liable in all expenses incurred by the pursuers, in consequence of the said requisition, as the said notice and tender in itself more fully bears, and further] that the pursuers were not willing to pay the amount of the said claim or to enter into any written agreement for that purpose, gave notice to the defender that it was their intention [*narrate terms of notice and tender*].

5. The said notice and tender were served upon the defender on , conform to execution of service produced herewith.

6. The defender has not accepted the said sum of £ offered by the pursuers in the said notice and tender, and it has therefore become necessary [but always under protest and reservation as aforesaid] to make the present application.

7. By the 53rd section of the said Lands Clauses Consolidation (Scotland) Act, 1845, it is enacted [*quote section*].

8. The pursuers are desirous [under protest and reservation as aforesaid] that the present question of disputed compensation should be tried before a [special] jury, as provided by the said section.

PLEA IN LAW.

The pursuers being desirous [under protest and reservation as aforesaid] that the present question of disputed compensation should be tried before a [special] jury, decree should be pronounced as craved.

Settlement of Compensation where Proprietor is Abroad or cannot be Found.

Where the proprietor of subjects cannot be found, or is prevented by reason of absence from the kingdom from treating with the Company, the amount of compensation is determined by a valuator nominated by the Sheriff. Before entering upon his duties, the valuator must make and subscribe an oath for the due performance of his duties.

On depositing in bank the amount fixed by the valuator, the Company is entitled to the subjects.

In such cases, however, the amount fixed by the valuator is not conclusive; the owner, if dissatisfied with the valuation, is entitled to have the amount of the compensation settled by arbitration, provided he makes his demand before applying for payment or investment of the deposited money.

The question to be submitted to the arbiters is whether the sum deposited was a sufficient sum, or whether any or what further sum should be paid

5. For Appointment of Valuator (s. 57).

Sheriffdom of at .

The M. N. Railway Company, incorporated by Act of Parliament, *Pursuers*,

against

A. B. [*designation*], *Defender.*

The demand of the pursuers is—

For the nomination of a valuator, in terms of sec. 57 of the Lands Clauses Consolidation (Scotland) Act, 1845, to determine the

compensation payable to the defender in respect of lands taken by pursuers for the purposes of their undertaking, consisting of [*describe subjects*] and belonging to defender, who by reason of absence from the kingdom is prevented from treating [*or* who cannot, after diligent inquiry, be found; *or* who after due notice failed to appear at a diet appointed for inquiry before a jury].

Therefore the pursuers crave the Court—

To find that the said A. B. is absent from the kingdom [*or* cannot be found], and is thereby prevented from treating with the pursuers for the purchase-money or compensation to be paid to him in respect of the said lands [*or* that the said A. B., after due notice, failed to appear at the diet appointed for inquiry before a jury]; and to nominate a valuator to determine on oath the amount of the purchase-money or compensation to be paid by the pursuers in respect of the taking of the said lands, all in terms of the Lands Clauses Consolidation (Scotland) Act, 1845, and particularly sec. 57 thereof.

Condescendence

1. The pursuers are the M. N. Railway Company, incorporated by the M. N. Railway Act, 19 . The defender is the proprietor of the lands and estate of , of which the subjects described in the prayer of the petition form part.

2. By the M. N. Railway Act, 19 , the pursuers are authorised to construct a line of railway [*set out authority to construct railway and acquire lands*]. The lands described in the crave are required by the pursuers for the purposes of their undertaking, and are part of the lands which they are by said Act authorised to acquire.

3. The defender is at present out of the kingdom [*or* cannot, after diligent inquiry, be found], and is thus prevented from treating with the pursuers as to the purchase-money or compensation payable to him in respect of the taking of the said land; [*or* failed after due notice to appear at a diet appointed for inquiry before a jury].

4. By sec. 57 of the Lands Clauses Consolidation (Scotland) Act, 1845, it is enacted [*quote section*].

Plea in Law.

The proprietor of the said lands being prevented by absence from the kingdom from treating as to the purchase-money or compensation payable therefor [*or* having failed, after due notice, to attend at a diet appointed for inquiry before a jury, the amount of purchase-money or

compensation falls], the same falls to be settled by a valuator appointed by the Court in terms of said Act.

Entry on Lands.

NOTE.—1. Entry for the Purpose of Surveying.—*For the purpose merely of surveying and taking levels, &c., the promoters may enter upon lands on giving not less than three nor more than fourteen days' notice to the owners and occupiers. They must also make compensation to these parties for all damage thereby occasioned. Even for these limited purposes the promoters can only enter upon lands which they are under obligation to take permanently for the purposes of their undertaking* (*see Dalgleish*, 9 *D.* 505).

2. Entry on Making Deposit and Granting Bond.—*Where promoters are desirous of getting entry to lands before the amount of compensation payable in respect thereof has been ascertained, and they have not the consent of the parties interested, they may avail themselves of the provisions of sec.* 84. *In terms of this section they must deposit in bank the amount of the claim made by any party interested and not consenting, or the sum at which the value of the lands or the interest of such party is assessed by a valuator to be appointed by the Sheriff. Further, if so required, they must tender to the non-consenting party a bond for a sum equal to that placed on deposit-receipt for payment of such compensation as may ultimately be determined to be payable, with interest at* 5 *per cent. from the date of entry till payment.*

Where the promoters are a company or corporation, the bond is granted by the secretary or proper officer; if not incorporated, by the promoters or any two of them. In both cases there must be two sufficient sureties, to be approved of by the Sheriff in case of difference of opinion.

In the case of railway companies the provisions of sec. 84 *have been modified by those of sec.* 36 *of the Railway Companies (Scotland) Act,* 1867 (30 & 31 *Vict. c.* 126). *The valuator falls to be appointed not by the Sheriff but by the Board of Trade; further, seven days' notice must be given of the promoters' intention to apply for the appointment of a valuator, and the securities to the bond must be approved of by the Board of Trade.*

If the promoters or any of their contractors wilfully enter upon any lands except in compliance with these provisions, they become liable to the person in possession in a penalty of £10 *over and above the damage done.*

If, after conviction, the promoters or their contractor still remain in possession, they incur a further liability of £25 *for every day they remain in possession.*

If the owner or occupier of any premises wrongfully refuses to cede possession, the promoters may apply to the Sheriff, who may authorise and order possession to be given. The expenses of the application may be retained out of the compensation falling to the party refusing to give up possession, or, if that sum is insufficient, may be recovered by pointing and sale.

6. Suspension and Interdict against Entry (s. 83).

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

The M. N. Railway Company, incorporated by Act of Parliament, *Defenders.*

The demand of the pursuer is—

For interdict, in terms of sec. 83 of the Lands Clauses Consolidation (Scotland) Act, 1845, against defenders from entering on pursuer's property of [*describe subjects*].

Therefore the pursuer craves the Court—

To interdict the defenders, by themselves or others, from entering upon or otherwise interfering in any way with the said property until they shall pay to the pursuer or deposit in bank the sum of £ , or otherwise comply with the provisions of the Lands Clauses Consolidation (Scotland) Act, 1845, and the M. N. Railway Act, 19 ; and to grant interim interdict; and to find the defenders liable in expenses.

CONDESCENDENCE.

1. The pursuer is proprietor of the subjects No. Street, M. The defenders are the M. N. Railway Company, incorporated by the M. N. Railway Act, 19 .

2. By the said Act the said Company are authorised to construct a line of railway from M. to N., and for the purpose of their works to take the various lands [*narrate as in Act*]. The pursuer's property, described in the prayer of the petition, is part of the lands which they are so authorised to take.

3. By sec. 83 of the Lands Clauses Consolidation (Scotland) Act, 1845, it is provided [*quote section*].

4. The defenders have recently taken possession of the pursuer's said property, and are digging, excavating, and removing material therefrom. The pursuer's consent has not been given to the said possession and operations, nor have the defenders paid to him or deposited in bank the sum of £ claimed by him in respect of the taking of the said subjects.

PLEA IN LAW.

The defenders having entered on and interfered with the pursuer's property without having either obtained his consent or satisfied the statutory provisions thereanent, interdict and interim interdict should be granted as craved.

7. For Appointment of Valuator (s. 84).

Sheriffdom of at .

The Provost, Magistrates, and Councillors of the Burgh of F., *Pursuers*,

against

A. B. [*designation*], *Defender*.

The demand of the pursuers is—

For the appointment of a valuator, in terms of sec. 84 of the Lands Clauses Consolidation (Scotland) Act, 1845, to determine the value, in terms of sec. 61 thereof, of the subjects No. R. Street, F., belonging to defender, and proposed to be acquired by pursuers for the purposes of the Act, 19 .

Therefore the pursuers crave the Court—

To nominate a valuator to determine on oath the value of the said subjects, in terms of the said Act, and particularly secs. 61 and 84 thereof.

CONDESCENDENCE.

1. The pursuers are the provost, magistrates, and councillors of the burgh of F. The defender is proprietor of the subjects No. R. Street, F.

2. By the Act, 19 , the pursuers are authorised to [*set out briefly purpose of Act and authority to acquire lands compulsorily*].

3. By notice, dated , and served on the defender on , the pursuers intimated that they required and intended to take the said subjects, No. R. Street aforesaid, and by notice, dated , and served on the pursuers on , the defender intimated that he claimed the sum of £ as compensation in respect of the taking of said subjects, and that in the event of their not agreeing to give said amount, he desired the compensation to which he was entitled to be fixed by arbitration.

4. The pursuers and defender accordingly nominated and appointed as their arbiters, but said arbiters have not yet disposed of the said claim.

5. By sec. 84 of the Lands Clauses Consolidation (Scotland) Act, 1845, it is enacted [*quote section*].

6. The pursuers desire to take possession of the said subjects, and the present application is made for the purpose of having a valuator appointed to determine the value thereof.

PLEA IN LAW.

As the pursuers desire to get immediate entry to said subjects, they are entitled to have a valuation made for that purpose.

8. To Recover Penalty for Unlawful Entry (s. 87).

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

The M. N. Railway Company, incorporated by Act of Parliament, *Defenders.*

The demand of the pursuer is—

For payment by the defenders to the pursuer of £ , as penalty for taking possession of the subjects situated at No. R. Street, F., belonging to pursuer, without his consent, or making compensation therefor, as provided by the Lands Clauses Consolidation (Scotland) Act, 1845.

Therefore the pursuer craves the Court—

To grant a decree against the defenders for payment to the pursuer of £ , in terms of sec. 87 of said Act, with expenses; reserving to the pursuer all competent action for any further penalty that may be incurred by the defenders after [*specify date*].

CONDESCENDENCE.

1. The pursuer is proprietor of the subjects No. R. Street, F. The defenders are the M. N. Railway Company, incorporated by Act of Parliament.

2. By the M. N. Railway Act, 19 , the defenders are authorised to construct a line of railway therein described as [*set out briefly provisions of Act as to railway and acquisition of lands*].

3. On or about the defenders took possession of the pursuer's said subjects at No. R. Street without previously obtaining his consent, or making payment of any compensation to him, or making a deposit in security thereof, as provided in the Lands Clauses Consolidation (Scotland) Act, 1845.

4. On hearing of the defenders' actings the pursuer at once called on them to remove from the said premises, but they declined to do so.

5. Thereafter a complaint was presented to the Court in terms of sec. 87 of the said Act, and on the defenders were convicted thereunder. An extract of the said conviction is produced herewith.

6. By sec. 87 of the Lands Clauses Consolidation (Scotland) Act, 1845, it is provided [*quote section*].

7. Notwithstanding the said conviction, the defenders have continued in possession of said subjects, and at the time of bringing the present action they have been in possession thereof for days since said conviction.

PLEA IN LAW.

The defenders having for days after conviction remained in illegal possession of the pursuer's property, decree should be pronounced in terms of the prayer of the petition.

9. For Authority to Enter (s. 89).

Sheriffdom of at .

The M. N. Railway Company, incorporated by Act of Parliament, *Pursuers*,

against

A. B. [*designation*], *Defender*.

The demand of the pursuers is—

For warrant, in terms of sec. 87 of the Lands Clauses Consolidation (Scotland) Act, 1845, to enter on and take possession of land belonging to defender, consisting of [*describe subjects*] compulsorily acquired by pursuers for the purposes of their undertaking, the compensation assessed [*or* determined] as payable to defender in respect thereof having been tendered to and refused by him.

Therefore the pursuers crave the Court—

To grant warrant to the pursuers to enter upon and take possession of said lands: To ordain the defender to give them possession accordingly, and to interdict him from further excluding the pursuers from the said subjects: To grant interim interdict, and to find the defender liable in expenses; and to authorise the pursuers to deduct the taxed amount of said expenses from the compensation payable to the defender, all in terms of the said Act, and particularly sec. 89 thereof.

CONDESCENDENCE.

1. The pursuers are the M. N. Railway Company, incorporated by Act of Parliament, and the defender is the proprietor of the estate of X., of which the subjects described in the prayer of the petition form part.

2. By the M. N. Railway Act, 19 , the pursuers are authorised [*set out briefly purpose of Act and authority to acquire lands*].

3. By notice dated , and served on the defender on , pursuers intimated to the defender that they required and were to take for the purposes of their undertaking certain portions of his estate of M., being the pieces of ground particularly described in the prayer of the petition.

4. By notice dated , and served on the pursuers on , the defender intimated that he claimed £ in respect of the taking of the said lands, and that if said claim was not agreed to, he wished the amount of compensation to which he was entitled to be decided by arbitration.

5. By award dated , C. D. [*designation*], who had been appointed oversman in the arbitration between the parties, fixed the amount of compensation to which the defender was entitled in respect of the taking of the said pieces of land at the sum of £ . An extract of the said decree-arbitral is produced herewith.

6. Thereafter the pursuers offered payment of said sum to the defender, and requested him to allow them to enter upon the said subjects, but the defender refused to deliver up the said subjects or to allow the pursuers to take possession thereof.

7. By sec. 76 of the Lands Clauses Consolidation (Scotland) Act, 1845, it is provided [*quote section*].

8. By sec. 89 of the said Act it is provided [*quote section*].

9. On the pursuers deposited with the Bank the said sum of £ , to an account in name of the defender, subject to the control and disposition of the Court of Session, and on they expede a notarial instrument in terms of the said 76th section of the Lands Clauses Consolidation (Scotland) Act, 1845. The said deposit-receipt and notarial instrument are produced herewith. Notwithstanding that the pursuers have completed a title to the said subjects, and that the whole interest of the defender is now vested absolutely in the pursuers, the defender still continues to hinder the pursuers from taking possession of the said subjects, and the present application has thus been rendered necessary.

PLEA IN LAW.

The pursuers being entitled to possession of the said subjects, and the defender having illegally hindered them from entering upon and taking possession thereof, they are entitled to warrant and interdict in terms of the prayer of the petition.

Commonties.

NOTE.—*Provision is made for the acquisition of commonties by secs.* 93-98 *of the Act. The method is that the promoters summon a meeting of the parties having interest. The meeting may then appoint a committee, not exceeding five in number. For the purpose of ascertaining the amount of compensation to be made, this committee are henceforth treated as the proprietors of the commonty, with full power to agree with the promoters and discharge the price, or to proceed to have the question settled as one of disputed compensation.*

If no effectual meeting takes place or no committee is appointed, the compensation falls to be assessed by a valuator appointed by the Sheriff.

10. For Appointment of Valuator (s. 97).

Sheriffdom of at .

The M. N. Railway Company, incorporated by Act of Parliament, *Pursuers.*

The demand of the pursuers is—

For the nomination of a valuator, in terms of sec. 97 of the Lands Clauses Consolidation (Scotland) Act, 1845, to determine the compensation payable by pursuers in respect of their acquisition of certain portions of the East Common of T.

Therefore the pursuers crave the Court—

To nominate a valuator, in terms of said Act, to determine on oath the amount of the compensation to be paid by the pursuers in respect of the acquisition by them of certain parts of the East Common of T., which the pursuers are authorised to acquire for the purposes of their undertaking.

CONDESCENDENCE.

1. The pursuers are the M. N. Railway Company, incorporated by Act of Parliament. By the M. N. Railway Act, 19 , the pursuers are authorised *inter alia* to construct a line of railway, therein called Railway No. , from to , and for the purposes of said undertaking, &c. [*set out authority to acquire lands*].

2. Included in the said lands which the pursuers are thereby authorised to take are certain parts and portions of the commonty usually known as the East Common of T. Said pieces of ground are numbered and on the plans and in the book of reference relative to the said Act.

3. In accordance with the provisions of the Lands Clauses Consolidation (Scotland) Act, 1845, the pursuers convened a meeting of the parties interested in the said common to be held within the Hall, T., on at o'clock. Only three persons appeared at the said time and place, and accordingly no effectual meeting of the persons interested in said common has taken place.

4. By sec. 97 of the Lands Clauses Consolidation (Scotland) Act, 1845, it is provided [*quote section*].

PLEA IN LAW.

No effectual meeting of the persons interested in said common having taken place, the pursuers are entitled to have the compensation payable by them determined by a valuator appointed by the Court.

Lands under Lease.

Where lands are held under lease for a term of years the tenant is entitled to notice to treat and to the benefit of the various compensation clauses, as being a person interested in the sense of sec. 17. *Special provision, however, is made by sec.* 114 *for the case where he is only tenant for a year or from year to year. The compensation payable to such tenants falls to be assessed by the Sheriff, irrespective of the amount of the claim. Such a tenant, moreover, is only entitled to compensation from the promoters, and not to abatement of rent. Where a tenant holds under a lease for a term of years, and only a part of such lands is acquired by the Company, the rent must be apportioned between the part taken and the remaining part. Such apportionment may be made by agreement between the landlord and tenant on the one part, and the promoters on the other. Failing such agreement, the apportionment falls to be made by the Sheriff.*

11. For Abatement of Rent (s. 114).

Sheriffdom of , at .

A. B. [*designation*], tenant of the farm of S. in the parish of Y. and county of X., *Pursuer*,

against

C. D. [*designation*], proprietor of said farm, *Defender*.

The demand of the pursuer is—

For a determination of the abatement of rent allowable by defender to pursuer during remainder of pursuer's tenancy of the farm of S., in terms of sec. 114 of the Lands Clauses Consolidation (Scotland) Act, 1845.

Therefore the pursuer craves the Court—

To determine what abatement of rent should be allowed by the defender to the pursuer during the remainder of the pursuer's tenancy of the farm of S., under a lease by the defender in favour of the pursuer; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is tenant of the farm of S. under a lease by the defender in favour of the pursuer, dated . The defender is proprietor of the estate of S., of which the said farm is part. The rent payable under said lease is £ .

2. The M. N. Railway Company recently took, by virtue of their statutory powers, certain parts of the said farm of S., extending to or thereby, as shown on the plan herewith produced.

3. [*Set out circumstances as to special value of lands taken.*]

4. In these circumstances the pursuer applied to the defender for an abatement of £ from the rent payable by him under said lease. The defender refuses to allow an abatement of more than £ from said rent, and the present application has thus been rendered necessary.

PLEA IN LAW.

The pursuer and defender having failed to agree as to the abatement of rent to be allowed by the defender to the pursuer in the circumstances condescended on, the amount of said abatement falls to be determined by the Court.

12. To Fix Compensation to Yearly Tenant at Instance of Company (s. 114).

Sheriffdom of at .

The M. N. Railway Company, incorporated by Act of Parliament, *Pursuers*,

against

A. B. [*designation*], *Defender*.

The demand of the pursuers is—

For a determination of the compensation payable by pursuers to

defender in respect of the acquisition by them of defender's premises, No. R. Street, F.

Therefore the pursuers crave the Court—

To ordain the defender to appear before the Court at such diet as it may appoint, to determine the amount of compensation to be paid by the pursuers to the defender in respect of his being required by them to give them possession of the premises, No. R. Street, F., of which he is tenant; and to find the defender liable in expenses, all in terms of the Lands Clauses Consolidation (Scotland) Act, 1845, and particularly sec. 114 thereof.

CONDESCENDENCE.

1. [*Designation of pursuers and authority conferred upon them to construct railway and acquire lands.*] The defender carries on the business of a at R. Street, aforesaid. He holds the said premises as a yearly tenant [*or otherwise as the case may be*].

2. By notice dated , and served upon the defender on , the pursuers intimated to the defender that they were to acquire the said subjects for the purposes of their undertaking, and that they were to enter into possession thereof on .

3. By sec. 114 of the Lands Clauses Consolidation (Scotland) Act, 1845, it is enacted [*quote section*]. The pursuers are willing to compensate the defender in respect of the unexpired term of his tenancy, but they have been unable to come to terms with the defender as to the amount payable by them, and the present application has thus been rendered necessary.

PLEA IN LAW.

The pursuers and defender being unable to agree as to the compensation payable to the defender in the circumstances condescended on, the amount thereof falls to be determined by the Court.

13. To Fix Compensation to Yearly Tenant at Instance of Tenant.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

The M. N. Railway Company, incorporated by Act of Parliament, *Defenders*.

The demand of the pursuer is—

For payment by the defenders to the pursuer of £ with interest and expenses, in terms of sec. 114 of the Lands Clauses

Consolidation (Scotland) Act, 1845, as damages for defenders having taken possession of pursuer's premises at No. R. Street, F.

Therefore the pursuer craves the Court—

To grant a decree against defenders for payment to pursuer of £ , with interest from till payment, and expenses.

CONDESCENDENCE.

1. The pursuer is , and until carried on business at R. Street, F. The pursuer was a yearly tenant of the said premises. The defenders are the M. N. Railway Company, incorporated by the M. N. Railway Act, 19 .

2. In pursuance of the purposes of the said Act, the defenders on entered into possession of the said premises at R. Street, aforesaid.

3. At the time when the defenders entered into possession of the pursuer's said premises there were still of the pursuer's lease thereof to run.

4. The pursuer estimates the loss and damage which he has sustained by reason of the defenders taking possession of the said premises at the sum of £ , made up as follows [*give details*].

5. By sec. 114 of the Lands Clauses Consolidation (Scotland) Act, 1845, it is enacted [*quote section*].

6. The pursuer has repeatedly applied to the defenders to make payment of the said amount, but they refuse or delay to do so, and the present action has thus been rendered necessary.

PLEAS IN LAW.

1. The defenders having, in virtue of their statutory powers, dispossessed the pursuer, are bound to make compensation to him for the loss thereby sustained.

2. The sum sued for being reasonable and moderate, decree should be pronounced therefor, with interest and expenses, as concluded for.

Miscellaneous.

MINERALS.

Special provision is made as to minerals by sec. 70 *of the Railways Clauses Consolidation (Scotland) Act.* (*See also sec.* 18 *of the Waterworks Clauses Act,* 1847.) *Under this statutory provision minerals, unless they are expressly conveyed, are reserved to the mine-owner, save only such parts*

as are necessarily dug or carried away during the construction of the works. If the person in right of the minerals under the works or within 40 *yards thereof desires to work the minerals, he must give thirty days' notice of his intention. If the proprietors of the works desire that these minerals, or any part thereof, be not worked out, they may give notice of such desire, and offer to make compensation for their being left unworked. Failing their giving such notice within the thirty days, the owner may proceed to work the minerals until such time as the proprietors of the works give notice that they are willing to purchase such portion of the minerals as may then remain unworked.*

Under secs. 76 *and* 77 *railway companies are entitled to inspect mines in the neighbourhood of the railway, in order to satisfy themselves that these are not being worked so as to endanger the railway.*

Owners, lessees, or occupiers of mines who refuse to admit the Company's inspector become liable to a fine not exceeding £20.

14. For Recovery of Penalty for Refusal to Allow Inspection of Mine (s. 77).

Sheriffdom of at .

The M. N. Railway Company, incorporated by Act of Parliament, *Pursuers*,

against

A. B. [*designation*], *Defender*.

The demand of the pursuers is—

For declarator that defender is in breach of sec. 77 of the Railways Clauses Consolidation (Scotland) Act, 1845, and for payment by the defender to the pursuers of a sum not exceeding £20.

Therefore the pursuers crave the Court—

To ordain the defender to appear before the Court at such diet as it may appoint: To find that the defender has, in breach of said Act, wrongously refused to permit the pursuers to inspect the coal-mine commonly known as the X. Pit, occupied by the defender and situated in the parish of T.; and to grant a decree against the defender for payment to the pursuers of a sum not exceeding £20; and to find defender liable in expenses.

CONDESCENDENCE.

1. The pursuers are the M. N. Railway Company, incorporated by Act of Parliament. The defender is lessee of the minerals in the estate of R., and in particular of a mine on that estate commonly known as

the X. Pit. The pursuers' railway traverses the said estate of at a distance of about a quarter of a mile from the said pit.

2. By sec. 76 of the Railways Clauses Consolidation (Scotland) Act, 1845, it is enacted [*quote section*].

3. On the pursuers intimated that their mining engineer would proceed to the said X. pit on for the purpose of inspecting the mineral workings there. The pursuers' mining engineer accordingly proceeded to the said pit on said date, but was refused admission by the defender's manager, who informed him that he had instructions from the defender not to allow him to inspect the said workings.

4. By sec. 77 of the said statute it is provided [*quote section*].

Plea in Law.

The defender having wrongously refused to allow the pursuers to inspect said mineral workings, is liable in the statutory penalty provided in that event.

Occupation for Temporary Purposes.

Under the 25th and following sections of the Railways Clauses Consolidation (Scotland) Act, 1845, *power is conferred to enter temporarily upon lands in connection with the construction of railways. The purposes for which lands may be taken in this way are*—(1) *Construction of roads;* (2) *for taking earth and soil for side cuttings;* (3) *for spoil-banks; and* (4) *for obtaining materials for the construction and repair of the railway and accommodation works.*

No payment, tender, or deposit is necessary, but in all cases the Company must give notice both to owner and occupier. In the case where the temporary use of the subjects will not affect their substance, ten days' notice is sufficient, but in the last three cases three weeks' notice is required.

In all cases where a three weeks' notice is required, the owner or occupier may object to the proceedings of the Company, either on the ground that the lands or materials are essential to the beneficial use and enjoyment of neighbouring lands not taken, or that there are other lands in the neighbourhood which might more fittingly be taken by the Company. If the Company refuse to give effect to the objection, the question falls to be settled by the Sheriff.

In such cases also the owner or occupier may require the Company to purchase his interest. For this purpose such parties may, at any time after the Company has taken possession and before compensation has been accepted, serve upon the Company a notice of claim similar to the notice required by the Lands Clauses Act.

Where the company desire to take possession of existing roads, the notice must state the time during which and the purpose for which the company require the use of the road.

In all cases where lands are taken for temporary purposes and the owner does not insist upon the same being permanently purchased, the Company must make compensation in the manner provided by the statute.

15. To Settle Dispute as to Temporary Occupation of Lands (ss. 28-31).

Sheriffdom of at .

A. B. [*designation*], proprietor of the estate of R. in the parish of S. and county of Y., *Pursuer*,

against

The M. N. Railway Company, incorporated by Act of Parliament, *Defenders*.

The demand of the pursuer is—

For a settlement, in terms of secs. 28 to 31 inclusive of the Railways Clauses Consolidation (Scotland) Act, 1845, of the dispute between pursuer and defenders as to the lands, if any, belonging to pursuer which shall be used by defenders for the purposes of their undertaking, as set forth in the notice by them to pursuer, dated , and served .

Therefore the pursuer craves the Court—

To appoint the parties to appear before the Court, and to grant warrant to cite C. D. [*designation*] to attend the diet fixed, and after hearing such of the said parties, including the said C. D., as may appear at the time and place fixed, or after such inquiry as the Court may deem necessary, to determine which lands shall be used by the defenders for the purposes set forth in the said notice; and to find the defenders liable in expenses, all in terms of the said Act.

CONDESCENDENCE.

1. By notice, dated , and served upon the pursuer on , the defenders intimated [*set out substance of notice as to lands to be taken temporarily*].

2. By notice, dated , the pursuer gave notice to the defenders that he objected to the defenders making use of the foresaid lands for the purposes specified in the said notice, on the ground that the land so proposed to be taken, with the materials contained therein, was essential to be retained by the pursuer in order to the

beneficial enjoyment by the pursuer of other neighbouring lands belonging to him. The pursuer further intimated to the defenders that certain lands belonging to C. D., or other lands belonging to the pursuer near those proposed to be taken, would be more fitting to be used for the foresaid purposes, and that he was willing that the defenders should take and use these last-mentioned lands for the said purposes, upon the terms set forth in the said notice. A copy of the said notice is produced herewith.

3. By sec. 30 of the Railways Clauses Consolidation (Scotland) Act, 1845, it is enacted [*quote section*].

4. By sec. 31 of the said statute it is enacted [*quote section*].

5. The defenders refuse to occupy the said lands offered by the pursuer, or the lands of any other party, in lieu of those mentioned in said notice, and the present application has thus been rendered necessary.

PLEA IN LAW.

The lands embraced in the defenders' notice being essential to the pursuer, and those suggested by pursuer to defenders being better fitted for the purposes mentioned in said notice, the defenders should be ordained to take the latter.

16. For Repair of Bridges, &c.

Where a Railway Company is bound to maintain in proper repair any bridge, fence, &c., and refuses or delays to do so, the Sheriff or two justices of the peace may order the Company to put the bridge, &c., into complete repair within such time as the Court may appoint. Failing compliance with their order, the Company becomes liable to a fine of £5 for every day during which the failure continues.

The right to invoke this jurisdiction is conferred upon the surveyor of roads or any two householders of the parish or district where the work is situated.

Sheriffdom of at .

A. B. [*designation*], surveyor of roads for the district of the county of X., *Pursuer*,

against

The M. N. Railway Company, incorporated by Act of Parliament, *Defenders*.

The demand of the pursuer is—

For an order on defenders to repair the bridge carrying their railway over the public road from N. to R., and failing their doing so, for

payment of the statutory penalty, in terms of sec. 57 of the Railways Clauses Consolidation (Scotland) Act, 1845.

Therefore the pursuer craves the Court—

To ordain the defenders to put said bridge into complete repair within such time and at the sight and to the satisfaction of such person as the Court shall appoint, and failing their doing so, to authorise pursuer to make the necessary repairs: To grant a decree against the defenders for payment to the pursuer of five pounds for every day that they shall fail so to do: To authorise pursuer to apply the said penalty, or such part thereof as the Court may appoint, in putting said bridge into repair; in the event of said penalty proving insufficient to defray the cost of said repairs, to grant a decree against the defenders for payment to the pursuer of the sum ascertained to be the cost of said repairs expended in excess of said penalty; and to find the defenders liable in expenses; all in terms of said Act.

Condescendence.

1. The pursuer is surveyor of roads for the district of the county of X. The bridge after mentioned is situated within said district. The defenders are the M. N. Railway Company, incorporated by Act of Parliament.

2. The said Company was incorporated for the purpose of constructing a railway from M. to N. At a point about two miles from N. the said railway is carried by a bridge over the public road from N. to R.

3. By the said M. N. Railway Act it was provided [*quote clause as to maintenance of bridge*].

4. The said bridge has been recently suffered to fall into disrepair [*state specifically existing defects of bridge*].

5. On the pursuer intimated to the defenders that unless the said bridge were at once put into repair he would make the present application to have them ordained to do so. Ten days have now elapsed since said intimation, but the defenders have not yet repaired the said bridge.

6. By sec. 57 of the Railways Clauses Consolidation (Scotland) Act, 1845, it is provided [*quote section*].

Plea in Law.

The defenders being bound to maintain the said bridge in proper repair, and having failed to do so, decree should be pronounced in terms of the prayer of the petition.

Lands Valuation Appeals.—*See* VALUATION APPEALS.

Law Agent.—*See* ACCOUNT, No. 5.

Lawburrows, Letters of.

NOTE.—*These are applied for where one has reasonable ground for apprehending danger to his person or property from the acts of another. By the letters the respondent is required to find security that the complainer or his goods shall not be injured by him, under a penalty.*

The application is now only competent in the Sheriff and Justice of Peace Courts. The procedure is summary. On presentation of the application, service is ordered, and warrant granted to cite witnesses to an early diet. At the proof the case is disposed of under the Summary Jurisdiction Acts, without written pleadings or recording the evidence.

If, notwithstanding the letters of lawburrows, the respondent should persist in molesting the complainer, the latter may, with concurrence of the procurator-fiscal (*Robertson*, 11 *M.* 910), *sue an action of contravention of lawburrows, concluding for payment of a penalty, half to the Crown and half to the complainer.*

No appeal seems to lie against the grant or refusal of letters of lawburrows; but they may be set aside by suspension, but only on averments of malice and want of probable cause.

1. Application for Lawburrows.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For a decree ordaining defender to find caution that pursuer and his family shall be kept harmless and in no way molested by defender under a penalty of £50.

Therefore the pursuer craves the Court—

To ordain the defender, within such short time as the Court may appoint, to find caution of lawburrows that the pursuer, his family and servants, shall be kept harmless in their bodies, goods and gear, and in no way be molested or troubled therein by the defender, either directly or indirectly, by himself or others, and that under a penalty of £50, or such other sum as the Court

may appoint [*or* otherwise, if the Court think proper, to ordain the defender to grant his bond to the effect and extent foresaid]; and in the event of his failing to find caution [*or* grant bond] as aforesaid, to grant warrant for the imprisonment of defender for such period, not exceeding six months, as the Court may appoint, or until he find caution [*or* grant bond] as may be ordered; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The defender some time ago conceived a feeling of hatred and ill will against the pursuer, and has repeatedly threatened the pursuer with personal violence. [*If there be any particular cause of difference between the parties, state it.*] In particular, on the defender threatened to "do for" the pursuer, and on "that he would have his (the pursuer's) life if he swung for it."

2. The pursuer is afraid lest the defender should put the said threats into execution, and the present action has thus been rendered necessary.

PLEA IN LAW.

The defender having threatened to injure the pursuer, the pursuer is entitled to decree in terms of the prayer of the petition.

2. For Contravention of Lawburrows.

Sheriffdom of at .

A. B. [*designation*] and J. H. [*designation*], Procurator-Fiscal of Court, for the public interest, *Pursuers*,

against

C. D. [*designation*] and E. F. [*designation*], *Defenders*.

The demand of the pursuers is—

For forfeiture of the sum contained in a bond of caution granted on by the defender E. F. in respect of the contravention of the obligation therein specified by the defender C. D.

Therefore the pursuers crave the Court—

To find that the defender C. D. has contravened the obligation specified in a bond of caution granted by the defender E. F. on in an application for lawburrows at the instance of the pursuer against the said C. D.: To declare the said bond forfeited and the penalty therein provided incurred: To grant a decree against the defenders jointly and severally for payment

to the pursuers in equal portions of £50 sterling; and to find defenders jointly and severally liable in expenses.

CONDESCENDENCE.

1. The pursuer A. B. on presented an application for lawburrows against the defender C. D.

2. After sundry procedure on said application, the Court on ordered the said C. D. to find caution acted in the Books of Court for the sum of £ , and on the said defender lodged a bond of caution signed by the defender the said E. F. An extract of the said bond is produced herewith.

3. On or about [*set out particulars of contravention*].

PLEA IN LAW.

The defender the said C. D. having contravened the obligation contained in said bond of caution, the pursuers are entitled to decree, with expenses, as craved.

Lease.—*See also* ACCESS; AGRICULTURAL HOLDINGS ACT; ARBITRATION; DECLARATOR; EJECTION; ENTAIL; FACTORS (JUDICIAL); ILLEGAL DILIGENCE; IMPLEMENT; INSPECTION; INTERDICT; REMOVING; SEQUESTRATION.

1. To Have Farm Stocked and Laboured.

(*See also supra*, INSPECTION.)

Sheriffdom of at .

A. B. [*designation*], proprietor of the estate of T. in the parish of Y. and county of Z., *Pursuer*,

against

C. D. [*designation*], tenant of the farm of X. on said estate, *Defender*.

The demand of the pursuer is—

For authority to enter into possession of and to stock and labour said farm, of which defender is the tenant, under the pursuer, conform to lease in his favour dated , for years from Martinmas 19 .

Therefore the pursuer craves the Court—

To authorise the defender to enter into possession of and to stock and labour the said farm in terms of the said lease, and perform

the whole other conditions and provisions therein specified; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is heritable proprietor of the estate of T., of which the said farm of X. forms a part. The defender is tenant of and resides at the farm of M., which is adjacent to the farm of X.

2. By lease, dated 19 , the pursuer let the said farm of X. to the defender for years from Martinmas 19 , on the several conditions and obligations therein stated. The said lease is herewith produced and referred to.

3. [*Give details of defender's failure to stock and labour farm in terms of lease.*]

4. In these circumstances the pursuer finds it necessary to apply to the Court to have the defender ordained to fulfil the terms of his lease. The pursuer reserves all claims of damage against the defender in connection with his failure to stock and labour the said farm.

PLEA IN LAW.

The defender being bound, in terms of the said lease condescended on, to stock and labour the said farm, the pursuer is entitled to decree, with expenses, as craved.

2. To have Shop Stocked and Kept Open.

(*See also* IMPLEMENT; PLENISH.)

Sheriffdom of at

A. B. [*designation*], *Pursuer.*

against

C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For a decree ordaining defender to stock the shop, No. Street, , leased by him from pursuer, to fire and air said subjects, and to carry on therein the business of [and failing his doing so within such time as the Court may appoint, to ordain defender to flit therefrom himself, family, dependants, goods and gear, and to cede peaceable possession thereof to pursuer].

Therefore the pursuer craves the Court—

To ordain the defender—(1) to stock and plenish the said shop and other premises to an extent at least sufficient to afford security

to the pursuer of the sum of £ , being the half-year's rent of the said subjects; (2) to fire and air the said subjects and to put and hereafter maintain them in a sufficient state of repair during the defender's tenancy thereof; (3) to open and keep open and to carry on the business of in the said subjects during the defender's tenancy thereof: To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation till payment; and to find the defender liable in expenses [*if preferred, a conclusion for removal on failure to implement the conditions of the lease may be inserted in place of or in addition to that for damages, as follows;* and failing his so doing within such period as the Court may appoint, to ordain the defender immediately to cede to the pursuer possession of the said subjects, and to flit and remove himself, his family and dependants, goods and gear, from the same, and to cede peaceable possession thereof to the pursuer, always without prejudice to the defender's liability to pay the rent of the said subjects till the expiry of his tenancy thereof].

CONDESCENDENCE.

1. By lease, dated 19 , the pursuer let to the defender the shop, saloon, and other premises forming No. Street, , for years from Whitsunday 19 , at the annual rent of £ .

2. [*Quote or narrate such of the provisions of the lease as bear on the conclusions of the prayer.*] The said lease is herewith produced and referred to.

3. The defender duly opened and stocked the said shop, and occupied it as a down to the term of Martinmas 19 . Shortly before said term, however, he accepted a position as manager to Messrs. X. & Y., merchants in Glasgow, and thereupon, without notice to or the consent of the pursuer, closed the said shop and removed and sold off the whole stock therein.

4. Notwithstanding repeated requests by the pursuer to possess and carry on business in the said shop, the defender persists in leaving the premises unoccupied. In consequence thereof, and of the defender's failure to fire and air the premises, and also to keep the same in repair as he was bound to do under his lease, they are getting into a state of dilapidation.

5. About Christmas 19 the defender (although sub-tenants were expressly excluded by his lease) sublet the said premises to a

who occupied them as a for a fortnight. The occupation of the shop for such temporary purposes will seriously deteriorate the property and reduce its value as business premises.

6. By the defender's refusal to possess and carry on business in the said premises, and to keep them in a state of repair, the pursuer has suffered and will continue to suffer loss and damage, which is moderately estimated at the sum sued for.

PLEAS IN LAW.

1. In respect of the defender's failure to carry out the terms of the lease in his favour as condescended on, the pursuer is entitled to decree for implement thereof, as first concluded for.

2. The pursuer having suffered loss and damage through the defender's failure to implement the terms of his lease, is entitled to decree in terms of the second conclusion of the crave.

[3. In the event of the defender failing to implement his part of the said lease, the pursuer is entitled to decree of removal, as concluded for.]

3. To have House Plenished, Fired, and Aired, and on Failure for Ejection.

(*See also supra*, IMPLEMENT.)

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For a decree ordaining the defender to plenish, air, and fire the house, No. Street, , of which he is tenant under missive dated ; failing his doing so within such time as the Court may appoint, for warrant to eject defender therefrom, and for authority to pursuer to relet same, and for expenses.

Therefore the pursuer craves the Court—

To ordain the defender—(1) to plenish the house, No. Street, , of which he is tenant, to an extent sufficient to secure the half-year's rent due at Martinmas 19 , amounting to £ ; (2) to keep the said house constantly and sufficiently aired and fired during his tenancy thereof; in the event of the defender failing to plenish, air, and fire the said

house, to grant warrant to officers of Court summarily to eject the defender and his whole goods and effects therefrom, and to authorise the pursuer to relet the said shop for the remainder of the year to Whitsunday 19 at such rent as he can obtain; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The defender is tenant of the house, No. Street, , belonging to the pursuer, for the year to Whitsunday 19 , under missive offer, dated 19 , and acceptance thereof, dated 19 , herewith produced, at the annual rent of £ .

2. In consequence, it is believed, of a difference between the pursuer and defender as to the amount of painting to be done by the pursuer, the defender refused to occupy and plenish the said house, and it is now standing empty. The pursuer has repeatedly required the defender to occupy, or at least to plenish, fire, and air the said house, but he declines to do so, and the present action is therefore rendered necessary. The pursuer reserves all his claims for deterioration or injury caused to the said house through the defender's failure to plenish and occupy the same as aforesaid.

PLEAS IN LAW.

1. In virtue of the lease of , constituted by the said missives, the defender is bound to occupy or at least to plenish, air, and fire the said house as craved, with expenses.

2. In the event of the defender failing to occupy, or plenish, air, and fire the said house, the pursuer is entitled to warrant to eject him and to relet the house as craved, with expenses.

4. For Warrant to Relet Shop.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D., some time carrying on business as C. D. & Co., drapers, Street, , and residing at Place, there, but whose present address is to the pursuer unknown, *Defender*.

The demand of the pursuer is—

For warrant to relet the shop, No. Street, , some time occupied by defender, under missive dated .

Therefore the pursuer craves the Court—

To grant warrant to the pursuer to relet the premises at such rent or rents and for such period or periods up to the term of Whitsunday 19 as can be obtained, and to apply such rents as may be obtained in payment *pro tanto* of the rent and interest thereon due or to become due by the defender for the said premises at or prior to the said term of Whitsunday 19 : To grant warrant to officers of Court, if necessary, to open shut and lockfast places; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The defender has been for several years tenant of the shop, No. Street, , belonging to the pursuer. By missive letter, dated March 19 , he retook the said shop for the year to Whitsunday 19 at the rent of £ per annum.

2. In the beginning of April 19 the defender absconded from , and, as the pursuer believes, has left Scotland and gone to the United States of America or elsewhere abroad. The said shop is, the pursuer is informed, empty, the defender having removed or sold all the stock prior to his departure, and there is thus no security for payment of the rent thereof.

3. In these circumstances the pursuer desires to relet the premises for such rent as he can obtain, reserving all claims for rent and damages against the defender.

PLEA IN LAW.

The pursuer having deserted the tenancy of the said premises without paying or finding security for the rent thereof, warrant to relet should be granted as craved.

Legacy.—*See* AGRICULTURAL HOLDINGS ACT; DECLARATOR.

Legatee, for Declarator of Bequest of Lease.—*See* AGRICULTURAL HOLDINGS ACT.

Legatee, for Accounting by, against Trustees.—*See* ACCOUNTING, No. 9.

Legitim, for Payment of.—*See* PAYMENT.

Legitimation, per subsequens matrimonium.

Under the Scots law illegitimate children are legitimated by the subsequent marriage of their parents. The parents must, however, have been at the time when the child was conceived in a position to have legally married each other. That either of the parents has been married to some other person in the interval between the conception and the marriage is immaterial.

Under the Registration of Births Act, sec. 26, *a note of such legitimation by subsequent marriage can be made in the original entry of the birth. If the paternity has been declared by decree of the Court, or if the paternity has been acknowledged and so registered at the time of the birth, the registrar may correct the entry at his own hand. In all other cases, he must, however, have the authority of the Sheriff for altering the entry.*

As the Sheriff is required to cause due intimation to be made, and to hear parties having an interest to oppose, the relatives whose legal rights may be ousted by the legitimation should be called as defenders, and the registrar may either be called for any interest he may have, or the petition may merely be intimated to him.

Sheriffdom of at .

A. B. [*designation*], and C. D. or B., wife of and residing with the said A. B., *Pursuers,*

against

M. B. [*designation*], and S. D. and T. D. [*designations*], *Defenders.*

The demand of the pursuers is—

For authority to the registrar of the district of to make the necessary entry for the legitimation *per subsequens matrimonium* of M. D., the pursuers' male child, registered as the illegitimate child of the female pursuer, the pursuers having been married on conform to certificate produced.

Therefore the pursuers crave the Court—

To authorise the registrar of births, deaths and marriages of the district of to insert in his register of corrected entries a note of the legitimation *per subsequens matrimonium* of M. D., the pursuers' child, and the date of registration of the said marriage, and to mark a reference thereto on the margin of the entry of the birth of the said child, No. in the birth register of the said district for the year 19 , all in terms of the Acts 17 & 18 Vict. c. 80, s. 36, and 23 & 24 Vict. c. 85, s. 13.

CONDESCENDENCE.

1. Upon the day of 19 the female pursuer was delivered of an illegitimate male child, of which the male pursuer is the father. On the information of the female pursuer the birth was recorded on 19 , under entry No. in the birth register of the district of . The child's name is given as M. D.

2. The pursuers were married on 19 , conform to extract herewith produced, and the said child has thereby been legitimated, but as the said legitimation cannot be recorded in the said register except under the authority of the Court, the present application is rendered necessary.

PLEA IN LAW.

The pursuers having by their marriage legitimated their said child, they are entitled, in terms of the statutes thereanent, to have the entry of its birth corrected as craved.

Lent Property, for Delivery of.—*See* DELIVERY, No. 1.

Letters, for Warrant to Open.—*See* BANKRUPTCY, No. 26.

Letters of Arrestment, for.—*See* ARRESTMENT; SHIPPING.

Level Crossing.—*See* LANDS CLAUSES ACTS.

Licence, for Declarator of Right to.—*See* DECLARATOR, No. 12.

Licence, for Delivery of.—*See* DELIVERY.

Liquidator, by, for Payment of Calls.—*See* CALLS; PAYMENT.

Loan, for Payment of.—*See* PAYMENT.

Lock up Premises, to.—*See* BANKRUPTCY, No. 11.

Lodger, for Warrant to Sell Effects of.—*See* WARRANT.

Maills and Duties.—*See* GROUND ANNUAL; HERITABLE SECURITIES ACT; POINDING OF THE GROUND.

Malice.—*See* REPARATION; SLANDER.

Manager, against Former, by Descriptive Firm for Accounting.—*See* ACCOUNTING, No. 3.

Mandate.—*See* BANKRUPTCY; MOTION.

Mandatory.—*See* MINUTE; MOTION.

Manse.—*See also* APPEAL; CHURCH.

NOTE.—*Ministers of landward and burghal-landward parishes are entitled to manses to be erected and maintained by the heritors. In consequence of this obligation, the heritors may be called upon*—(1) *to provide a manse, or* (2) *to repair, add to, or rebuild an existing one. The former case can scarcely ever be expected to arise now, but applications under the second head are of frequent occurrence.*

Every minister is entitled at the beginning of his incumbency to have the manse put into a proper state of repair at the expense of the heritors. On this being done, the heritors may apply either to the presbytery or to the Sheriff under the Ecclesiastical Buildings and Glebes Act, 1868, *to have the manse declared a "free manse."*

If the presbytery declare the manse "free," then the minister is responsible for all ordinary repairs during his incumbency. The heritors, however, remain liable for all extraordinary repairs caused by unforeseen calamity or deterioration of the fabric itself. In a few cases also, where the incumbency has been of unusual duration, the heritors have been held liable even in ordinary repairs.

If the manse is declared "free" by the Sheriff, the effect of the decree is by the statute limited to fifteen years, and on the expiry of that period the minister may again compel the heritors to repair the manse.

There is the same right of appeal from the presbytery to the Sheriff and the Lord Ordinary on Teinds as in the case of applications for the repair of churches.

The circumstances in which repairs, repairs and additions, and rebuilding are respectively required will be found exhaustively stated in

Lord President Inglis's opinion in the Insch case, 8 *M.* 363, *and full reports of several very instructive Sheriff Court cases will be found in the appendix to Mr. Black's Parochial Ecclesiastical Law.*

The obligation to furnish a manse includes the provision of all usual and necessary offices, and also the erection and repair of a wall round the garden.

To have Manse declared "Free."

Sheriffdom of at .

A. B. [*designation*], &c., *Pursuers,*

against

M. N., minister of the parish of Y., *Defender.*

The demand of the pursuers is—

For a declarator, in terms of the Ecclesiastical Buildings and Glebes Act, 1868, that the manse of the parish of Y. is free, and the pursuers freed from maintaining it for fifteen years or such less period as the defender may be the incumbent thereof.

Therefore the pursuers crave the Court—

To find and declare that the manse and offices of the said parish of Y. have been properly repaired, and that the same is a free manse and offices; that the pursuers are freed and relieved from maintaining the same for the period of fifteen years from the date of the decree hereon, or such less period as the defender shall be incumbent of the parish, and that the defender is bound to maintain the same during the foresaid period; and to find the defender liable in expenses in the event of his appearing and opposing the conclusions hereof.

Condescendence.

1. The pursuers are the heritors of the parish of Y., and the defender is the minister of that parish.

2. The defender was ordained to the ministry of said parish on or about . Shortly thereafter he presented an application to the presbytery of X. to ordain the pursuers to repair his manse, offices, and garden wall. After sundry procedure the said presbytery on ordained the pursuers [*set out repairs ordered by presbytery*].

3. These repairs have now been done in a sufficient manner at the expense of the pursuers, and the said premises are now in a state of complete repair, and are of a substantial structure, and in every way suitable and sufficient for the accommodation of the defender, as minister of the said parish, and his successors in office.

4. By the Ecclesiastical Buildings and Glebes (Scotland) Act, 1868, it is provided, sec. xii. [*quote section*].

PLEA IN LAW.

The said manse having been put into a state of thorough repair, decree should be pronounced as craved.

March Fences.—*See* DECLARATOR, Nos. 17 and 18.

Marriage, for Warrant to Register Irregular.

NOTE.—*The following three styles are usually written as one document.*

(1) PETITION.

Sheriffdom of at .

A. B. [*designation*], and C. F. or B., his wife, *Pursuers.*

The demand of the pursuers is—

For declarator that upon the pursuers contracted an irregular marriage and for warrant to the registrar of the district of to register said marriage, in terms of the Marriage (Scotland) Act, 1856.

Therefore the pursuers crave the Court—

To find, in terms of the Marriage (Scotland) Act, 1856, that the pursuers on 19 , at [*place*] contracted an irregular marriage, and that [the male, *or* female, *or* both] pursuer[s] had resided in Scotland for twenty-one days immediately preceding the date of the said marriage [*or* had their *or* his *or* her usual residence in Scotland at the date of the said marriage], and to grant warrant to the registrar of the district of to register the said marriage, all in terms of the Act 17 & 18 Vict. c. 80, and the said Act.

CONDESCENDENCE.

1. The pursuers contracted an irregular marriage with each other within the office of , Writers, , on the day of nineteen hundred and , as will be evidenced by their declaration hereto annexed and other evidence to be adduced.

2. The pursuers [*or* the pursuer, the said] had

resided in Scotland for twenty-one days immediately preceding the date of the said marriage.

Or, The pursuers had their [*or* his *or* her] usual residence in Scotland at the date of the said marriage.

PLEA IN LAW.

The pursuers having contracted an irregular marriage as condescended on, are entitled to decree as craved.

(2) DECLARATION OF MARRIAGE.

I, A. B. [*designation*], do hereby accept of C. F. [*designation*] as my wife, and I, the said C. F., do hereby accept of the said A. B. as my husband, and we do hereby declare ourselves to be married to each other, and authorise C., solicitor, , to do what is necessary to get the marriage certified by the Sheriff and registered.—In witness whereof this declaration is subscribed by us at , upon the day of nineteen hundred and , before these witnesses, E. R. [*designation*] and F. T. [*designation*].

E. R., *witness.* A. B.

F. T., *witness.* C. F.

Alternative Form.

[*Place and date.*] We, A. B. [*designation*] and C. D. [*designation*], hereby accept and acknowledge each other as husband and wife.

R. S. [*designation*], *witness.* A. B.

T. M. [*designation*], *witness.* C. D.

(3) PROOF.

At , the day of , in presence of Esq., [Advocate,] Sheriff-Substitute of at .

Present .

Appeared G. [*designation*], who, being solemnly sworn and examined, depones: I was present in the office of C., solicitor, , when the irregular marriage between the petitioners, A. B. [*designation*] and C. F. or B. [*designation*], was contracted on the day of , and I know the petitioners, and am aware that they had both lived in Scotland for twenty-one days immediately preceding said marriage [*or as the case may be; see condescendence of petition*, supra]. All which is truth, as I shall answer to God.

[*Signature of first deponent.*]

Also appeared H. [*designation*], who, being solemnly sworn and

examined, depones: I concur *in omnibus* with the preceding witness. All which is truth, as the deponent shall answer to God.

[*Signature of second deponent.*]

Marriage, Breach of Promise of.

1. Damages for Breach of Promise of Marriage.

Sheriffdom of at .

A. B. [*designation*] *Pursuer,*
against
C. D. [*designation*], *Defender.*

The claim of the pursuer is—

For payment by the defender of £100 as damages for breach of his promise to marry pursuer.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £100, with interest from the date of citation, and expenses [and to grant warrant, &c.].

CONDESCENDENCE.

1. The pursuer, who is years of age, was until recently a dressmaker in E., and resided with her father, a grocer and wine merchant there. The defender is a partner with his father in a wholesale drapery business in G. The said business is a lucrative one, and the defender informed the pursuer that he had a half share in the profits.

2. The pursuer was employed in a drapery warehouse in E., of which the defender was then manager, from January 1900 until June 1902. Shortly after pursuer went to said employment the defender began to pay her attention [*narrate fully the defender's attentions to pursuer*, e.g. *taking her to entertainments, &c., calling at her house, introducing her to relatives, &c.*].

3. On 1st January 19 the defender spent the afternoon and evening at the house of the pursuer's parents, and on that evening he promised to marry her. The defender having won the affections and respect of the pursuer, she accepted of his offer. He intimated that he was to be assumed as partner by his father early in the ensuing year, and promised to marry the pursuer shortly after this took place. During the following week the defender purchased an engagement ring, which he himself put upon the pursuer's finger in the presence of her mother.

4. [*Narrate further attentions paid pursuer, presents given her, terms of correspondence, &c.*]

5. The relations between the pursuer and defender continued on the most affectionate footing until 23rd January 19 , on which date she received a letter from him in which he stated that he had changed his mind, and that he could not now marry her, alleging falsely that she had been keeping company with a young man named F. G. in E. during the preceding year. The pursuer wrote in reply, denying the allegation, and the pursuer's mother also called on him and assured him that there was no foundation for the said charge, and requested him to fulfil his engagement to marry the pursuer. The defender, however, refused either to implement his promise of marriage with pursuer or to give any reasonable excuse for his failure to do so, and the pursuer believes and avers that he is about to be married to another person.

6. The pursuer has been deeply wounded in her feelings as well as injured in her health, character, and reputation, and she has thereby suffered great loss and damage. In June 19 the pursuer, on the advice of her family doctor, in consequence of the state of her health induced by the treatment of the defender, gave up her situation and went for three months to the seaside to recover.

7. The defender informed the pursuer that, while manager in said warehouse in , his salary was £150 per annum, and that on being assumed as partner with his father his income would be over £300 per annum.

PLEAS IN LAW.

1. The defender having, in breach of his promise, refused to marry the pursuer, is bound to make reparation to her therefor.

2. The damages sued for being fair and reasonable, decree should be pronounced as craved.

2. Damages for Breach of Promise and Seduction.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender of £150 as damages for his seduction of pursuer and breach of his promise to marry her.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £150, with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The pursuer is years of age, and is the daughter of E. B. [*designation*]. The defender is about years of age, and is a farmer at X., near Y.

2. On or about 19 the defender, who is a bachelor and lives alone, engaged the pursuer to act as his housekeeper. Soon after entering his service the defender began to pay the pursuer attention and to profess affection for her. He at the same time asked the pursuer to take her meals with him and to sit with him in his sitting-room in the evenings, and in this arrangement the pursuer, after some demur, acquiesced. At various times the defender made presents to the pursuer of articles of jewellery and clothing. He took her to public entertainments, and introduced her both in his own house and elsewhere to his friends and acquaintances.

3. Towards the end of the year 19 the pursuer received the offer of another and better situation. On hearing of this the defender became greatly agitated, and told the pursuer he would never allow her to leave him, and urged her to promise never to marry any man but him. From that time forward the defender spoke repeatedly both to the pursuer and to her and his own friends of their setting up house together, and of certain changes in the furniture and domestic arrangements that would then be necessary. These conversations, the pursuer understood, had reference to their approaching marriage. In particular, on the first night of the year 19 , in presence of , the defender said, "It was all settled between him and Maggie, and that they would be the happiest couple in Scotland."

4. On or about the day of 19 the defender attended a meeting at Y., and on his return about midnight he entered pursuer's bedroom and proposed to sleep with her. There was no other person in the house at the time. The pursuer was much distressed by defender's conduct, but he assured her it was all right, as they were as good as married. On the faith of the defender's repeated promises to marry her as soon as possible, the pursuer at last yielded to his solicitation and permitted him to have carnal intercourse with her, and the defender thus seduced the pursuer. On various occasions during the months of following the defender had connection with the pursuer in the farmhouse of X., and in consequence thereof the pursuer became pregnant, and on , at No. Street,

gave birth to a male child, of which defender was the father. The said child only lived months, and died on 19 .

5. At Whitsunday 19 the defender dismissed the pursuer from his service, and the pursuer has since learned that about that time he became engaged to the person who is now his wife. In consequence of defender's conduct the pursuer has suffered great distress of mind. She has been unable to get another situation, and her whole prospects have been seriously injured.

6. The defender has been called upon to compensate pursuer for said seduction, and for the loss, injury and damage which she has sustained as aforesaid, but he refuses to do so, and the present action has thus been rendered necessary.

PLEAS IN LAW.

1. The defender having promised to marry pursuer, and having wrongfully, and to the pursuer's loss, injury and damage, broken said promise, he is liable to her in reparation therefor.

2. The defender having seduced the pursuer, is liable in reparation therefor.

3. The pursuer having suffered loss, injury and damage in consequence of the defender having seduced her, is entitled to compensation therefor.

3. Conclusion for Inlying Expenses and Aliment for Illegitimate Child.

This will be inserted before the words "with expenses," *numbering the conclusion for damages* (1), (2)—(1) the sum of £ , with interest thereon at the foresaid rate from [*date of birth*] till payment; and (2) the sum of £ per annum for [seven, *or if a girl*, ten] years, quarterly, and in advance as from the said date, with interest at the foresaid rate on each instalment from the date of its falling due till payment.

Married Women's Property Act, 1881.

To Dispense with Husband's Consent.

NOTE.—*If the husband is absent from Scotland, or his address is unknown, the action will be raised in the Sheriff Court of the wife's residence. In other cases it will be raised in the Sheriff Court of the husband's residence. The wife's adultery does not necessarily bar the application* (*Niven*, 20 *S. L. R.* 587). *It may possibly be competent to ask a general power to*

dispense with consent to all deeds (*Gibson*, 1 *S. L. T.* 323), *but it is more usual to specify the particular deeds to be executed.*

Sheriffdom of at .

Mrs. A. B. or D., presently residing at , wife of C. D. [*designation*], *Pursuer*,

against

The said C. D., *Defender*.

The demand of the pursuer is—

For authority to dispense with the consent of the defender to a disposition in favour of G. F. [*designation*] of a tenement of houses, No. X. Street, Y., belonging to pursuer, in terms of sec. 5 of the Married Women's Property (Scotland) Act, 1881.

Therefore the pursuer craves the Court—

To authorise pursuer to dispense with the consent of the defender to said disposition, and to declare that said disposition shall be as effectual as if it had been granted with his consent; and to find the defender liable in expenses in the event of his offering opposition hereto.

CONDESCENDENCE.

1. The pursuer and defender were married on . Some time ago the pursuer and defender executed a minute of agreement of separation, and since then the pursuer, with the defender's consent, has lived apart from him [*or otherwise set out desertion by husband*].

2. On the death of her father on 19 the pursuer succeeded to, *inter alia*, a tenement of houses, No. X. Street, Y. The said tenement consists of one- and two-roomed houses, let to weekly tenants. The cost of factoring and of the maintenance and repair of the said property absorbs the greater part of the income therefrom.

3. On 19 the pursuer sold the said tenement to the said G. F., and on 19 the pursuer requested the defender to concur with her in the disposition of the said tenement, but he refuses to do so.

4. By sec. 5 of the Married Women's Property (Scotland) Act, 1881, it is provided [*quote section*].

PLEA IN LAW.

The pursuer living apart from her husband with his consent [*or* having been deserted by her husband], is entitled to have the consent of her husband to the said disposition dispensed with.

Master and Servant.—*See also* INDENTURE; IMPLEMENT, No. 6; REPARATION, No. 10; WORKMEN'S COMPENSATION ACT.

1. Interdict to Enforce Restriction against Servant Carrying on Similar Business.

(*See also* INTERDICT, No. 12.)

NOTE.—*The leading case on contracts in restraint of trade is Nordenfelt* v. *Maxim-Nordenfelt Co., L. R.* [1894] *A. C.* 535, *and it would be well to consult it before commencing any action to enforce such restrictions. The latest Scottish cases are Ballachulish Slate Co.* v. *Grant*, 5 *F.* 1105, *and Berlitz School of Languages* v. *Duchêne*, 6 *F.* 181.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For interdict against the defender from carrying on the business of within miles from Glasgow Cross [*or as the case may be*] [and for payment by the defender of £ , as damages, with interest], and for expenses.

Therefore the pursuer craves the Court—

To interdict the defender from [at any time prior to 19] carrying on, or assisting any other person to carry on, the business of , at any place within miles of Glasgow Cross [*or* within the counties of X. and Y., *or* within Scotland, *or whatever be the limits stipulated for in the contract*]; and to grant interim interdict [to grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation]; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer carries on the business of at No. X. Street, in the city of Glasgow, and also in the villages of R. and S. In the month of January 19 he engaged the defender to take charge of the branch of his said business in R., on the terms and for the remuneration set forth in the agreement between the pursuer and defender, dated 19 , herewith produced and referred to.

2. By Article of the said agreement it was stipulated that [*quote terms of Article restraining defender from carrying on any similar business*].

3. The defender duly entered pursuer's service, and continued therein

as manager of the said R. branch until 19 , when he left of his own accord. Immediately on leaving the pursuer's service, the defender set up the business of in T., which is only miles from R., and is within the area of miles from the city of Glasgow stipulated in the said agreement. The defender further, by means of vans, solicits orders for and sells at various places within the said miles of Glasgow.

4. The pursuer's agents have repeatedly written to the defender, pointing out that carrying on the business of within the said area was a breach of his agreement with the pursuer, but to none of the letters has any reply been received. [Through the defender's breach of contract in carrying on the business of within the area prohibited by the said agreement, the pursuer has suffered loss and damage, which is moderately estimated at the sum sued for.]

PLEAS IN LAW.

1. The defender having, in breach of the agreement condescended on, carried on the business of within miles from Glasgow Cross, the pursuer is entitled to interdict as craved.

[2. The pursuer having, through the defender's breach of contract, suffered loss and damage to the extent sued for, is entitled to decree for payment thereof.]

2. For Delivery of Books and Drawings Copied from Documents Belonging to Master, and for Interdict against Use of Information Derived therefrom.

(*See also* DELIVERY, No. 5.)

NOTE.—"*A breach in the obligation of fidelity occurs when the papers or books of the master, coming into the hands of the servant for the purposes of his master's business, are used for the servant's own purposes*" (*Umpherston on Master and Servant*). *See the cases of Rollo* v. *Thomson*, 19 *D.* 994 (*drawings and sketches of machinery*); *Liverpool, &c., Friendly Society* v. *Houston*, 3 *F.* 42; *and Robb* v. *Green*, *L. R.* [1895] 2 *Q. B.* 1, 315 (*lists of customers*).

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For delivery, within days, of all drawings and sketches of [*state with sufficient accuracy what the drawings, &c., are of, e.g.*

works and parts of works carried out under the supervision of or by or for the pursuer, *or* machinery or parts thereof manufactured by or for the defender, *or as the case may be*], and all notes and memoranda thereanent; (2) all books containing [*specify kind of private lists or memoranda*]; and (3) all copies of such drawings, sketches, notes, memoranda, and books; and for interdict from the defender using or communicating the said drawings, sketches, notes, memoranda, and books, or any information therein contained, and for interim interdict [*if desirable, insert demand for damages, see preceding style*].

Therefore the pursuer craves the Court—

To ordain the defender, within days, to deliver to pursuer all such drawings, sketches, books, notes, and memoranda, and all copies thereof in his possession or under his control: To interdict the defender from using or communicating said drawings, sketches, books, notes, and memoranda, or any information therein contained, and to grant interim interdict; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is an engineer and architect, and carries on business at No. X. Street, Y. He has been engaged in the practice of that profession for over years, and has during that time carried out many important works. He has also carried on an extensive practice as a valuator.

2. In the month of June 19 the defender entered the pursuer's service as principal draughtsman and assistant, and continued in that position until the end of 19 , when he left in order to commence business for himself as an architect and valuator. He now practises as such at No. R. Street, Y.

3. In the course of his practice the pursuer has accumulated a large collection of drawings and sketches of buildings and works of various kinds, in the construction of which he has been engaged or as to which he has been consulted. The said drawings and sketches, and also the notes and memoranda of the pursuer as to such buildings and works, are the sole property of the pursuer. He has also during a long series of years collected and entered in books information as to the values and prices of property in and around Y. The said information is nowhere else obtainable, and is of great use to the pursuer in his practice as a valuator.

4. During and in the course of his employment by the pursuer, the defender had access to the whole of the said books, drawings, sketches,

and notes, but he never had, and did not at any time request, permission to make copies thereof or excerpts therefrom for his own use. The defender, nevertheless, as the pursuer has since learned, during at least the last two years of his employment, was in the habit, both during and after office hours, of making copies for his own use of the said drawings, sketches, notes, and memoranda of values. These copies he retained, and now uses, or proposes to use, in the course of his practice as architect and valuator.

5. The said drawings, sketches, notes, and memoranda were communicated to the defender confidentially, and in the course of his employment by the pursuer, and the copying or use of the same was a breach of the defender's duty of fidelity to the pursuer as his master. The pursuer will be seriously prejudiced and injured in the practice of his profession by the defender using for his own purposes or communicating to others the information contained in the said drawings and others. The pursuer has written repeatedly to the defender to deliver up the said documents, but he refuses to do so, and the present action is thus necessary.

Pleas in Law.

1. The defender having obtained the documents mentioned in the prayer of the petition in breach of his contract of service with the pursuer, decree for delivery thereof should be granted as craved.

2. The documents mentioned in the prayer of the petition having been acquired by the defender in breach of trust and of his contract of service with the pursuer, the defender should be interdicted from using or communicating the same.

[3. The pursuer having suffered loss through the defender's breach of trust and of contract, is entitled to reparation therefor.]

3. For Damages for Illegal Dismissal.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender of £ as damages for defender's breach of contract in summarily dismissing pursuer from his service.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer

of £ , with interest from the date of citation, and expenses [and to grant warrant, &c.].

CONDESCENDENCE.

1. The pursuer is twenty-two years of age, and at present resides with her father at Street, . The defender is a foreman engineer, and resides with his wife and family of two sons and a daughter at Crescent, .

2. At the term of Martinmas 19 the pursuer was engaged by the defender's wife as general domestic servant for the ensuing half-year, at the wages of £ per annum. The pursuer duly entered on her duties, and performed these to her employer's satisfaction until the incident aftermentioned.

3. On or about the December 19 , the pursuer was ordered by Mrs. C. D. to go out and shovel away the snow from the footpath round the house, No. Crescent. There had been a heavy fall of snow during the preceding night, and it was then lying to a depth of not less than 5 inches. Owing to the said house being situated at a corner, the pavement extends round two sides to a length of about 70 yards, and is about 8 feet wide.

4. The pursuer had been, for some days previous to said date, and was then suffering from a severe cold on her lungs. She accordingly represented to her mistress the danger of standing and working among snow for the time it would require to accomplish the task, and suggested that at any rate she should have the assistance of the two sons, who had on previous occasions themselves cleared away the snow. Mrs. C. D. declined to accede to this request or to withdraw the order, and the pursuer thereupon, in view of her state of health, refused to carry out the order.

5. Mrs. C. D. then told the pursuer that as she could not obey orders she must go, and although it was still snowing heavily, required her to leave the house at once, which she did. On her way to her parents' house the pursuer got very wet, and in consequence her cold developed into pneumonia, which confined her to bed for over weeks, and from which she is only now recovering.

6. The pursuer has repeatedly applied to the defender for payment of the wages and board wages due to her in respect of wrongous dismissal, which she estimates at , the sum sued for, but he declines to make any payment, and this action is therefore necessary.

PLEA IN LAW.

The pursuer having been without notice or just cause dismissed by the defender, is entitled to reparation therefor as craved.

Merchant Shipping Act, 1894.—*See* SHIPPING.

Mine.—*See* INSPECTION, No. 6.

Mineral Workings.—*See* INSPECTION, No. 6; INTERDICT, No. 14.

Minute.

1. Abandonment.

Minute for A. B. [*designation*], *Pursuer*,
in action at his instance against
C. D. [*designation*], *Defender*.

The pursuer hereby offers to abandon this action in terms of the Sheriff Courts (Scotland) Act, 1907.

[*Signed by the party.*]

As an agent has no implied authority to abandon an action, it would seem proper that the minute in Sheriff Court actions be signed by the party.

2. Admissions.

A. B., for the pursuer, admits that the documents, Nos. 9 to 14 of process, are, so far as copies, to be held equivalent to principals [*or* that the letters, Nos. 9 and 10 of process, are holograph of the pursuers; *or* that the documents, 4 and 5 of process, are true excerpts from the defender's books].

3. Joint Minute of Admissions.

E. F. for pursuer and G. H. for defender concur in admitting that all letters in process were written by the parties by whom they bear to be written, and were received by the parties to whom they bear to be addressed, on or about the dates they respectively bear; and that copies of all documents in process, where principals are not produced, are equivalent to principals; and that the statements in said letters in process [*or such of them as may be arranged*] are to be held to be evidence in the cause.

[*If witnesses have been examined on commission, an admission to the following effect may be added:*—

And they further concurred in admitting that the witnesses whose evidence, taken on commission, is contained in the report, No. of process, are unable to attend the proof, that they dispense with the

re-examination of these witnesses, and that they hold the evidence so reported to be evidence in the cause.]

[*If facts are to be admitted, state them in order distinctly and without comment.*]

E. F.
G. H. [*Signatures of Agents.*]

A minute, not being a pleading, ought NOT *to bear the words "In respect whereof" at the end, but only signatures of Agents.*

4. Amendment.

(*a*) *Of Instance—Pursuer.*

A. B., for the pursuer, craved leave of the Court to amend the instance—

By adding to the designation of the pursuer the words, "as trustee [*or* executor, *or* assignee, *or as the case may be*] of the deceased X. Y. [*designation*];" *or,*

By deleting from the designation of the pursuer the words, "as trustee [*or* executor, *or* assignee, *or as the case may be*] of the deceased X. Y. [*designation*];" *or,*

By substituting the Christian names "John Henry" instead of "James Henley" in the designation of the pursuer; *or,*

By deleting from the designation of the pursuer the words, "engineer, residing at 33 Royal Crescent, Glasgow," and substituting therefor the words, "electrical and motor engineer, 33 Royal Terrace, Partick, Glasgow;" *or,*

By adding after the name and designation of the pursuer the words, "with the consent and concurrence of C. D. [*designation*];" *or,*

By adding after the name and designation of the pursuer the words, "and C. D. [*designation*], for any interest he may have," and substituting the word "pursuers" for "pursuer"; *or,*

By adding after the name and designation of the pursuers the words, "and C. D. [*designation*] and E. F. [*designation*]," and substituting the word "pursuers" for "pursuer";

[*Adding where necessary*] And by making the necessary alterations in the statement of claim, crave, condescendence, and plea in law thereby rendered necessary.

(*b*) *Of Instance—Defender.*

By adding to the designation of the defender the words, "as trustee [*or* executor, *or* assignee, *or as the case may be*] of the deceased X. Y. [*designation*];" *or,*

By deleting from the designation of the defender the words, "as trustee [*or as the case may be*] of the deceased X. Y. [*designation*];" *or*,

By substituting the Christian names "Walter Wilson" for "William Willison" in the designation of the defender; *or*,

By substituting for the designation of the defenders the words, "now or lately carrying on business as timber-merchants under the name of D. & Company, No. Street, , as such partners and as an individual;" *or*,

By adding after the name and designation of the defender the words, "and C. D. [*designation*], for any interest he may have;" *or*,

By adding after the name and designation of the defender the words, "and C. D. [*designation*]," and substituting the words, "jointly and severally defenders," for "defender";

[*And so on, adding where necessary*] And by making the necessary alterations in the statement of claim, crave, condescendence, and pleas in law thereby rendered necessary.

(*c*) *Altering or Increasing Conclusions.*

A. B., for the pursuer, craved leave of the Court to amend the initial writ—

By substituting in the statement of claim and crave the sum of £150 for the sum of £100 therein contained; *or*,

By adding after the word "interest" in the crave, the words, "from the 15th May 19 till payment;" *or*,

By adding after the words, "to find the defenders," the words, "jointly and severally;" *or*,

By adding after the words, "to deliver a bay horse," the words, "and a set of silver-mounted harness;"

[*Or, generally, words which have the effect of increasing the sum sued for, or subjecting any other additional funds or property of the defender to the adjudication of the Court, adding where necessary*] And to amend the condescendence and pleas in law by making the necessary alterations thereby rendered necessary.

(*d*) *Increasing or Altering Remedy Sought.*

NOTE.—*Provided only that it is necessary for the purpose of determining in the existing action the real question in controversy, any amendment of the initial writ (even although it has the effect of increasing or altering the remedy sought) is now competent, subject of course to such conditions as to expenses, re-service, or otherwise as the Sheriff may see fit to impose.*

Thus an action concluding for delivery of a specific article may be converted into one concluding for damages for the non-delivery of the article, and a defence to an action for payment of the sum contained in a bill may be converted from one that the bill had been retired quoad *the pursuer to one that the defender was discharged in respect of want of notice of dishonour* (*see Whilland* v. *Mackay*, 1909, 24 *S. L. Rev.* 157, *per Sheriff Fyfe*).

5. To Carry Back, &c.

(*See* WARRANT.)

6. Compearance—In Sequestration for Rent.

A. B., above designed, craves the Court to be allowed to compear in this sequestration. He claims [the piano, books, and trunk mentioned as [*give the description of the articles in the inventory*], *or, if the several articles in the inventory are numbered,* the piano, books, and trunk, Nos. of the] inventory and appraisement in the sequestration, as his property, and that the said articles ought not to have been included in the said inventory, and craves that, *quoad* these articles, the sequestration be recalled.

7. Concurrence—Craving Warrant of.

(*See* WARRANTS.)

8. Consent to Decree.

Minute for C. D. [*designation*], *Defender*,
in the action against him at the instance of
A. B. [*designation*], *Pursuer*.

E., for the defender, stated that he consented to the defences being repelled and decree pronounced in terms of the prayer of the petition [but under reservation of all claims of relief competent to him in the circumstances].

9. Curator ad litem, for Appointment of.

A., for the pursuer, stated to the Court that the defenders, B. C. and D. E., are minors without legal guardians [*if it be the case, add,* and have compeared in the process without the consent of curators], and craved the Court to appoint a curator [or curators] *ad litem* to the said defenders.

10. Declinature—Waiver of.

Joint Minute for the Parties
in causâ
A. B., *Pursuer*,
against
The C. D. Company, Limited, *Defenders.*

E. for pursuer and F. for defenders concurred in stating to the Court that they consented to Sheriff judging in this cause, although a shareholder in the [defendant Company].

11. Decree in Consequence of Failure to Implement Interlocutor.

If a minute be desired, it may be adapted from the form under MOTIONS, *see* infra.

12. Dependence—For Order to Intimate.

(*See* MOTIONS, *infra.*)

13. Disclamation.

NOTE.—*When any one is made a party to an action without his authority,* [e.g. *when an action is raised or defended in name of a number of trustees against the wishes of any of them,*] *he may disclaim the action by lodging a minute of disclamation. He will, if the minute is sustained, be found entitled to the expenses incurred by him in disclaiming against those who have made use of his name without authority.*

Minute for A. B. [*designation*],
in action of at the instance of
C. D. [*designation*], and Others, *Pursuers*,
against
E. F. [*designation*], and Others, *Defenders.*

G. for the minuter stated to the Court that he gave no instructions or authority for his name being included as one of the pursuers in this action [*or* for this action being raised in his name, *or* for appearance being entered, *or* for defences being lodged in his name in this action], and he therefore disclaimed and hereby disclaims the action [*or* the defences].

14. Implement—Decree for Failure to.

(*See* DECREE, *supra.*)

15. Intimate Dependence.

(*See* DEPENDENCE, *supra.*)

16. Proof—For Leave to Lead Additional.

Minute for Defender,
in causâ
X. *v.* Y.

A. for the defender stated to the Court that, while proof was being taken in this action on instant, B. C. [*designation*], a witness called and examined on behalf of the pursuer, deponed [*e.g.*, that he was in the company of the pursuer and defender on the evening of January last, in Street, Glasgow, and that he then heard the defender utter the slander complained of in this action]; that since the proof was closed and the cause taken to avizandum, the defender has ascertained and is now prepared to prove that [the said witness was not in Glasgow on the evening in question, but was in Edinburgh], and that the said evidence was false; that the said evidence [is the only corroboration of the pursuer's own evidence in the case [*or otherwise show how the false evidence is of vital importance*]]; that as [the defender knew that no one except the pursuer and defender was present at the said meeting on the evening in question], he could not be prepared to disprove the evidence which the said witness gave; counsel [*or* the procurator] for the defender therefore craved the Court to open up the proof, to allow the defender to adduce D. E. [*designation*] and E. F. [*designation*] as witnesses for the defender, in order to prove that [the said B. C. was not in Glasgow on the evening of the January last, but was then in Edinburgh]; and to fix a diet for taking said additional evidence.

17. Reference—Minute of Judicial.

A. for the pursuer and B. for the defender concurred in stating that the parties had agreed to refer the matters at issue in this action to the amicable decision of C. D. [*designation*], as judicial referee, and craved the Court to interpone authority hereto, and to remit in terms hereof [*if desired, add,* reserving the question of expenses for the decision of the Court].

NOTE.—*In the Sheriff Court, unless the agents have special authority to enter into a submission, the parties must themselves sign the minute with or without the agents' signature in addition.*

18. Reference to Oath.

A. [*for the party referring, or simply* The pursuer], refers the cause [*or* the rest-owing of the debt sued for, *or as the case may be*] to the oath of the defender.

If the reference is only of part of the cause, the facts or questions to be referred must either be stated shortly or referred to as contained in a particular condescendence or answer, thus : The defender refers the defence set forth in the answer to condescendence of the record to the oath of the pursuer.

NOTES.—(1) *In the Sheriff Court, the minute must be signed by the party, or the agent must produce special authority to sign. But a reference may be judicially adhered to before the Court or commissioner.*

(2) *Reference may be made at any time before extract, but after judgment the Court has a discretion to sustain or refuse reference.*

(3) *Reference cannot be made to the oath of a party who has already been examined or cross-examined as a witness by the party proposing the reference.*

(4) *The reference must be to the oath of the opponent, or to that of a person whose oath will bind the opponent, otherwise it would result in proof by one witness.*

(5) *A reference to oath may be withdrawn by leave of the Court.*

(6) *It is not competent after a judicial reference or after the action has been held irrelevant.*

(7) *For motion to sustain reference, see under* MOTIONS, *infra.*

19. Restriction.

I. In respect that since the initial writ was served, the defender has [taken delivery of the brown horse referred to in condescendence 2, and] paid to the pursuer £ , being [the price of said horse] as sued for, the pursuer hereby restricts the conclusions of the writ to payment of the sum of £ , being the sum sued for, as the price of , with expenses.

II. The pursuer hereby restricts the crave to the conclusion for [payment of the sum of £ , being damages as condescended on].

III. A. for the pursuer stated that he departed from the declaratory conclusions of the writ, and restricted and hereby restricts the writ to the petitory conclusion for payment of £ as damages.

NOTE.—*It is incompetent to reserve right to bring a new action for the part of the claim departed from.*

IV. A. for the pursuer stated that in respect the defender had now given the pursuer possession of the subjects referred to in the contract of sale libelled in the writ, it was no longer necessary for the pursuer to insist in the conclusions for implement, and that he departed and hereby departs therefrom, and restricted and hereby restricts the writ to the petitory conclusions for damages as libelled.

V. The pursuer hereby restricts the sum first sued for [*or* the principal sum sued for] to the sum of £ .

VI. The sum first sued for having been paid, the pursuer restricts the conclusions of the action to the second and third conclusions and the craving for expenses.

VII. The principal sum sued for having been paid by the defender, the pursuer restricts the conclusions of the action to the conclusion for expenses.

VIII. The defender having on 19 paid to the pursuer the sum of £ to account of the principal sum sued for [*or* the sum first sued for, *or as the case may be*], the pursuer restricts the said principal sum sued for [*or* the said sum first sued for], and relative interest, to decree for said sum, and interest, under deduction of the said sum of £ , and interest thereon from the said 19 .

20. Sist of Parties.

I. A. for the minuter craved that the said B. [*designation is given in title of minute*] be sisted as a party defender.

II. A. for the minuters stated that the pursuer died on the day of 19 , leaving a trust-disposition and settlement, dated 19 , whereby he appointed the minuters to be his trustees and executors, and craved the Court to sist the said B., C., and D., as trustees and executors foresaid, as parties pursuers.

21. Sist of Process.

(*See under* MOTIONS, *infra.*)

22. Transference.

(*See* TRANSFERENCE, *infra.*)

23. Wakening.

If the wakening is of consent, a minute in the following terms is written on the interlocutor sheets:—

"We, the agents for the parties, consent to the cause being wakened and proceeded with."

If consent is not given, a minute in the following terms is lodged and intimated as above noted. It is also, however, intimated on the walls of Court.

The procedure is regulated by secs. 101-103 *of the Sheriff Court Act,* 1907.

E. for the pursuer [*or* defender] stated that the last interlocutor in the cause was pronounced on 19 , and that the cause was asleep, and craved the Court to waken the cause, in terms of the Sheriff Courts Act, 1907, secs. 101-103.

24. Warrants.

(1) Charge Heir, &c., *under Conveyancing Act,* 1874, *Sched. K.*

Form of minute to be presented in Sheriff Court, for warrant to charge an heir or disponee under a personal obligation by his ancestor or author.

Warrant is craved, in virtue of the Conveyancing (Scotland) Act, 1874, at the instance of A. B. [*name and design applicant*], the creditor [*if he is not the original creditor or only a partial creditor, add,* in virtue of [*or* to the extent and in virtue of] the assignation [*or* general disposition and notarial instrument, *or other writ or writs forming the title in the creditor's person*] in his favour aftermentioned], under a bond and disposition in security over the lands of [*specify shortly the lands*], for the principal sum of £ , with corresponding interest and penalties, granted by C. D. [*design him*], then proprietor of the said lands, in favour of the said A. B. [*or* of G. H. [*design him*], *as the case may be*], and dated [*state date*] [*and if recorded say,* and recorded in the Register of Sasines [*state register and date of recording*], *or* and instrument of sasine thereon recorded, &c., *as the case may be*], to charge E. F. [*design him*], the present proprietor of the said lands, and as such the present debtor in the said bond and disposition in security, to make payment to the said A. B. of the said principal sum of £ , contained in and due by the said bond and disposition in security [*if A. B. is only a partial creditor, say,* of the principal sum of £ , being the extent to which the said A. B. is in right of the said bond and disposition in security]: and also of the further sum of £ , being the amount of the interest now due thereon. Produced herewith the said bond and disposition in security [*or an extract thereof from the Books of Council and Session or from the Register of Sasines; if the appli-*

cant is not the original creditor, the title in his own person to the security will also be stated and produced].

Dated the day of .

[*Signed*] A. B., Agent for ,

[*or as the case may be*].

The Sheriff-Clerk will subjoin, Fiat ut petitur.

[*To be dated and signed by the Clerk.*]

(2) Imprisonment.

(*a*) For Aliment.—*See* Aliment.

(*b*) For Enforcing Decrees "ad facta præstanda," Crown Taxes, Fines and Penalties, and Rates and Assessments.

These are the only civil obligations which can still be enforced by the compulsitor of imprisonment. It is understood that even in these cases imprisonment is in practice never resorted to.

The forms are those appended to the Personal Diligence Act, 1838.

Schedule 8.—*For Warrant to Imprison.*

[*Place and date.*]

The charge being expired and registered as per execution and certificate produced, warrant is craved to search for, take, and apprehend the person of the said A. [*name of debtor or obligant*], and being so apprehended to imprison him within a tolbooth or other warding place, therein to remain until he fulfil the said charge, and, if necessary for that purpose, to open shut and lockfast places; and warrant also to magistrates and keepers of prisons to receive and detain the said A. accordingly.

[*Signed*] A. B.

Schedule 9.—*By Assignee, &c.*

[*Place and date.*]

Warrant is craved [*state what is prayed for*] at the instance of [*specify name and designation of the applicant*], as [*assignee or otherwise, as the case may be*], of [*specify name and designation of the person at whose instance the extract was issued and in whose right the applicant is*]. Produced herewith [*say assignation or confirmation, or other legal evidence of the acquired right, as the case may be*]. Dated the day of

[*and if for imprisonment, execution of expired charge and certificate of registration shall be produced and warrant craved to imprison as in Schedule* 8].

[*Signed*] A. B.

Misrepresentation, Damages for.—*See* Reparation.

Molestation.

Note.—*As a result of the modern tendency to avoid special forms of procedure where the common forms can be adapted to serve the same purpose, this form of action has fallen entirely out of use. Its object can be equally well attained by an action of declarator of right to the property in dispute, interdict against trespass, and damages.*

Motions.

Note.—*There does not seem any very sufficient reason for making motions in writing. The written motion could not be used to contradict the interlocutor, or even probably to explain it. It is unknown in the Court of Session. As, however, a few Sheriff Courts prefer written motions, forms for such have been given.*

1. To Find Caution.

Motion for Defender,

in causâ

A. B. [*designation*],
against
C. D. [*designation*].

The pursuer's estates having been sequestrated on the day of , the defender respectfully moves the Court to ordain the pursuer to procure the trustee on his sequestrated estate sisted as a party to this action, or to find caution for expenses.

Note.—*This motion is usually made when the pursuer has been sequestrated or cessioed. The reason for asking caution from a bankrupt pursuer is, that if he is divested of his estate, and if there is no prospect of any reversion, he has no interest to pursue the action further; it is for the trustee to protect the creditors; hence mere poverty is not sufficient, and if the action is for vindication of character or reparation for personal injury, the bankrupt may be allowed to proceed without finding caution. A bankrupt defender is in a different position, and, as a general rule, will not be ordered to find caution.*

2. To Restrict Caution, &c.

D.'s Factory.

Motion for A. B. [*designation*], judicial factor on the estate of, &c.

The judicial factor respectfully moves the Court to restrict the amount for which he shall find caution, as factor foresaid, to the sum of £ ; [and to authorise the Accountant of Court to accept a bond of caution by the [*guarantee*] Company therefor].

3. To Conjoin Actions.

The pursuer [*or* defender] respectfully moves the Court, in respect of the contingency of this action with the action No. , between the same parties, to remit this action thereto for conjunction.

NOTE.—*The motion is lodged in the second action, and after remit the following motion is made in the leading action:—*

The pursuer [*or* defender] respectfully moves the Court to conjoin with this action the action No. , between the same parties, remitted hereto *ob contingentiam.*

4. For Curator ad Litem.

The defenders respectfully move the Court to appoint a curator *ad litem* to the pursuers, A., B., and C., who are minors without legal guardians.

NOTE.—*Motion may be at the instance of minor or his opponent; if the former, the motion would be—*

The pursuer, in respect he is a minor without legal guardians, respectfully moves the Court to appoint a curator *ad litem* to him.

5. To Fix Diet of Proof.

The pursuer [*or* defender] respectfully moves the Court to fix a diet for the proof allowed by interlocutor of [*date*] in this cause.

6. To Take Evidence.

1. PARTY.

In respect the pursuer [*or* defender] is resident at [*or* is about to proceed abroad and will be absent from this country for months], he respectfully moves the Court to take [*or* to grant commission to take] his evidence to lie *in retentis.*

NOTE.—*A motion to take the defender's evidence is usually granted*

without trouble. But a pursuer may have to show special cause, e.g. *that the expense of his coming from abroad would be disproportionate to the amount at stake. Any such explanation should be stated shortly in the motion.*

2. Witness.

(1) *Outwith Jurisdiction.*

In respect A. B. [*designation*], a material witness for the pursuer [*or* defender] is resident outwith the jurisdiction [*or* remote from the seat] of the Court, the pursuer [*or* defender] respectfully moves the Court to grant commission to take the evidence of the said witness.

Note.—*A witness in another county may be cited, but on special cause shown commission will be granted to take the evidence of such witnesses as well as of witnesses in England. The evidence of witnesses in a foreign country may be got by letters of request.*

(2) *Aged and Infirm.*

(a) *Where Proof Fixed.*

In respect that A. B. [*designation*] is a material witness for the pursuer [*or* defender], and, as appears from the certificate produced herewith,[1] is upwards of seventy years of age, and is unable to attend the Court and give evidence, the pursuer [*or* defender] respectfully moves the Court to grant commission to take the evidence of said witnesses.

(b) *To Lie* in retentis.

[*As above to*[1]] is seriously ill [*or* is suffering from, &c.], and his evidence is therefore in danger of being lost, the pursuer respectfully moves the Court to grant commission to take his evidence to lie *in retentis.*

7. Expenses—Decree for, in Name of Agent.

The pursuer's agent respectfully moves the Court to approve of the auditor's report on the pursuer's account of expenses, and to allow decree therefor to go out and be extracted in his name as agent disburser thereof.

8. Expenses—out of Property Recovered.

This is under sec. 6 *of the Law Agents Act,* 1891.

The pursuer's agent respectfully moves the Court to declare him entitled to a charge upon and against, and to find him entitled to

payment out of [the sum of £ , decerned for in favour of the pursuer in this action,[1]] of his expenses, as the same shall be taxed by the auditor, as between agent and client.

9. Implement Interlocutor—Decree for Failure to.

In respect the defender has failed to implement the interlocutor of [*date*] [although the same has been duly intimated to him, conform to execution No. of process], the pursuer respectfully craves decree in terms of [the declaratory, *or as the case may be*], conclusions of the prayer of the petition, with expenses.

10. For Interim Decree.

The pursuer respectfully moves the Court to grant decree *ad interim* in his favour against the defender for the sum of , admittedly due by him to the pursuer.

11. To Intimate Dependence.

In respect the defender's estates were sequestrated on the day of , and that A. B. [*designation*] has been appointed trustee thereon, the pursuer respectfully moves the Court to grant warrant to intimate the dependence of this action to the said A. B. as trustee foresaid, and to allow him to sist himself as a party defender within such period as the Court may appoint.

12. For Mandate.

The defender respectfully moves the Court to ordain the pursuer's agent to produce a mandate to sue.

13. To Sist Mandatory.

In respect pursuer has left Scotland and may not return, the defender respectfully moves the Court to ordain the pursuer to sist a mandatory.

14. To Remove from Poor's Roll.

In respect the pursuer does not merit the benefits of the poor's roll, the defender respectfully moves the Court to find that the pursuer is no longer entitled to sue *in formâ pauperis.*

[1] If not a sum of money, state shortly the property recovered for the client.

15. For Further Procedure.

The pursuer [*or* defender] respectfully moves the Court to appoint the cause to be put to the roll in order that the further procedure therein may be settled [*or* in order that it may be proceeded with].

16. To Prorogate Time.

The pursuer [*or* defender] respectfully moves the Court to prorogate the time for [*e.g.* lodging objections to the report, No. of process, allowed by the interlocutor of] for the period [*or* a further period] of .

17. To Sustain Reference to Oath.

The pursuer [*or* defender] respectfully moves the Court to sustain the reference to the defender's [*or* pursuer's] oath, and to assign a diet for taking the defender's [*or* pursuer's] deposition.

18. For Remit to Man of Business or of Skill.

The pursuer respectfully moves the Court to remit the defender's accounts and the objections and answers, Nos. and of process, to an accountant for examination, with power to call for vouchers, to hear parties thereon, and to report,

or

to remit to a person of skill to [*state purpose*], and to report.

19. Reponing.

(*See* Reponing Note.)

20. Report—Decree in Terms of.

The pursuer [*or* defender] respectfully moves the Court to grant decree in terms of the report by Mr. A. B., No. of process.

21. To Sell.

(1) Perishable Articles.

In respect the [*goods*] in question in this action are of a perishable nature, and will become of no value if not immediately disposed of, the pursuer respectfully moves the Court to grant warrant to A. B.

[*designation*], or such other person as the Court may appoint, to sell the same by public auction [*or as the case may be*], and to appoint the proceeds, less the expenses of sale, to be forthwith consigned in the hands of the Clerk of Court.

(2) Horse.

In respect the [grey] horse mentioned in the petition is now standing at livery [*or* has been standing at livery since 19], the pursuer respectfully moves the Court to grant warrant to sell the said horse.

See also Sale; Sequestration for Rent, *infra.*

22. Sist Procedure.

In respect the defender has raised an action in the Court of Session for reduction of the minute of agreement libelled herein, he respectfully moves the Court to sist process *in hoc statu.*

23. Sist Party.

(*See* Minute of Sist.)

24. Specification.

The pursuer respectfully moves the Court to approve of the specification of writings, No. of process, and to grant commission and diligence for recovery thereof [*or* to assign a diet for the examination of havers].

Moveable Estate.—*See* Presumption of Life Act.

Multiplepoinding.

Note.—*The following points, decided in recent cases, may be noted. Where there were competing claimants to one-half of a trust estate, the right to the other half not being in dispute, an action of multiplepoinding by a claimant bringing the whole estate into Court as the fund* in medio *was held incompetent* (*Macnab*, 1894, 21 *R.* 827). *As a rule, an action of multiplepoinding is incompetent to determine the right to a* future *fund* (*Cameron's Trs.*, 1844, 17 *Sc. J.* 42), *but where the fund* in medio *was stated to be a sum due by the nominal raiser to one of the defenders; where,*

in point of fact, there was an obligation on the nominal raiser to pay "such sum as might by A. B.'s certificate be ascertained to be due"; and where at the date of the action no certificate had been granted by A. B., an objection to the competency was repelled (*Highland Rly. Co.*, 1901, 38 *S. L. R.* 584). *Testamentary trustees are entitled to raise an action of multiplepoinding in order to obtain judicial exoneration, but not in order to solve doubts as to the administration of the trust* (*Paterson's Trs.*, 1899, 7 *S. L. T.* 154). *They do not require to allege double distress* (*Taylor*, 1836, 14 *S.* 817; *Blair's Trs.*, 1863, 2 *M.* 284; *Ewen's Trs.*, 1895, 3 *S. L. T.* 249), *provided only that the beneficiaries have refused them exoneration* (*Mackenzie's Trs.*, 1895, 22 *R.* 233). *It would appear that this privilege does not extend to trustees under a trust-deed for behoof of creditors* (*Tait*, 1895, 3 *S. L. T.* 265). *Considerable latitude is allowed as to the time for lodging claims, and a claim may be lodged* (*subject to such conditions as to payment of expenses as the Court may think fit*), *even after a decree of ranking and preference has been pronounced* (*Craig*, 1901, 9 *S. L. T.* 167); *but not when the judgment has become final by lapse of the appealing days* (*Terrell*, 1900, 2 *F.* 1055). *A new claim will not be received, nor may an existing claim be altered, after a decree of ranking and preference has been affirmed or altered* (*Wilson's Trs.*, 1900, 8 *S. L. T.* 23; cf. *Wilson's Trs.*, 1900, 37 *S. L. R.* 791). *But a riding claim will be received even after a decree of ranking has been pronounced* (*Scottish Life Assurance Co.*, 1902, 9 *S. L. T.* 293), *but not, it would seem, after the original claimant has obtained decree for payment* (*Anglo-Foreign Bank*, 1879, 16 *S. L. R.* 731). *In an action of multiplepoinding where a pupil child was found entitled to aliment out of a trust estate, and where, in consequence of change of circumstances, it was subsequently desired to have the aliment discontinued, a supplementary condescendence and claim was lodged by the trustees, but it was observed by the Court that they might have proceeded by motion* (*Purves's Trs.*, 1900, 8 *S. L. T.* 150). *On the question of double distress, the following observations were made by Lord Kincairney in the case of the Royal Bank of Scotland*, 1903, 11 *S. L. T.* 549: "*I think that some care and discrimination is required in dealing with the very many decisions reported on this plea, because there has been a very considerable change in the practice of the Court in regard to it. The scope of the plea has been very much narrowed, and many of the early decisions cannot be followed with safety. The more liberal and less stringent practice appears from the case of the Commercial Bank*, 1897, 25 *R.* 219." *In addition to the case cited by his Lordship, the following decisions may be referred to:—Agnew*, 1899, 1 *F.* 1026; *Glass*, 1899, 1 *F.* 391; *Wishart*, 1900, 8 *S. L. T.* 108; *Royal Bank*, 1902, 10 *S. L. T.* 105; *Ross*, 1902, 10 *S. L. T.* 203; *Boyd's Trs.*, 1906, 13 *S. L. T.* 878; *M'Dowell & Neilson's Trs.*, 1905, 8 *F.* 235; *M'Gillivray's Trs.*, 1905,

7 *F.* 733; *Richardson*, 1905, 12 *S. L. T.* 775; *Johnston*, 1905, 13 *S. L. T.* 537. *As to the questions which may be decided in an action of multiplepoinding*, cf. *Governors of Merchant Maiden Hospital*, 1902, 10 *S. L. T.* 207, *where it was held that the action was competent to decide which of two claimants was entitled to have a feu-charter granted in his favour.*

The name of the real raiser must be mentioned in the initial writ (*Sheriff Courts Act*, 1907, *rule* 129). *If the holder of the fund owes the money in a representative capacity, that should be stated in addition to his private designation, which should in any case be given. The action will be raised in the Court to whose jurisdiction the holder of the fund is subject, or in which the fund is situated. A person called as defender need not enter appearance if he is only to appear as a claimant, but must do so if he is to lodge defences in order to contest the competency of the action. Styles of petition appropriate to various cases are given* infra. *For styles of claims* (*including riding claim*), cf. *Forms Nos.* 1 *and* 3, infra. *These styles can be adapted to any petition of multiplepoinding and exoneration.*

1. To Determine Right to Arrested Funds.

Sheriffdom of at .

A. [*designation*], *Pursuer* and *Nominal Raiser*,

against

B. [*designation*], *Real Raiser*, C. [*designation*], *Common Debtor*, and D. and E. [*designations*], all *Defenders*.

The demand of the pursuer is—

For exoneration as the holder of a sum of £200, owed by pursuer to the said common debtor, and arrested in pursuer's hands by the defenders, who claim to be creditors of the common debtor.

Therefore the pursuer craves the Court—

To find that as the holder of the sum of £200 sterling, claimed by the defenders, he is only liable in once and single payment thereof, and is entitled, on payment or consignation, to be exonered thereof, and to obtain payment of his expenses; and to decern in favour of the party or parties who shall be found to have best right thereto.

CONDESCENDENCE.

1. The pursuer owes the common debtor, the said C., the sum of £200 under a promissory note, dated 19 . The said sum has been arrested in the hands of the pursuer by the said B., D., and E., creditors or pretended creditors of the said C., conform to schedules of arrestment herewith produced.

2. The pursuer is willing to make payment of the said sum to such parties as shall be found entitled thereto. In consequence, however, of the competing claims made thereon, he is not in safety to pay the said fund to any of the said claimants, and the present action has thus been rendered necessary.

PLEA IN LAW.

The pursuer should be found liable only in once and single payment of the fund *in medio*, and on payment or consignation thereof is entitled to exoneration and payment of his expenses.

NOTE.—*It is sometimes convenient to show the nature of the competition by narrating in the condescendence to the petition the several claims made. Where the pursuer is not the real raiser, care should be taken that the condescendence contains nothing which the former could deny.*

(1) Forms of a Claim.

Sheriffdom of at .

Claim for D. [*designation*],
in Multiplepoinding,
A. [*designation*], *Pursuer* and *Nominal Raiser*,
against
B. [*designation*], *Real Raiser*, C. [*designation*], *Common Debtor*, and D. and E. [*designations*], all *Defenders*.

CONDESCENDENCE.

1. On 3rd May 1902 the claimant supplied the common debtor with goods to the value of £150. No part of this debt having been paid, the claimant, on 1st June 1903, raised an action against the common debtor in the Sheriff Court at for payment thereof, and on 12th July 1903 obtained decree for said sum, with £10 of expenses, conform to extract decree herewith produced. On 1st November 1903 he used arrestments in the hands of the pursuer, the said A., for the sum of £160.

CLAIM.

The claimant claims to be ranked and preferred on the free fund *in medio* for the sum of £160.

PLEA IN LAW.

The claimant being a creditor of the common debtor, and having used arrestments in the hands of the arrestee, is entitled to be ranked and preferred on the free fund *in medio* in terms of his claim.

(2) Riding Claim.

Sheriffdom of at

Claim for E. [*designation*],
in Multiplepoinding,
[*Heading as before*].

CONDESCENDENCE.

1. The claimant is creditor of the said D. to the amount of £80, conform to decree in his favour obtained in the Sheriff Court at and dated . Copy extract of said decree is produced herewith.

2. The said D. has not paid to the claimant any part of said sum, and has lodged a claim upon the fund *in medio* in the present action for £160, and has used arrestments in the hands of the said A. in connection therewith.

3. The claimant has arrested the sum of £80 in the hands of the said A.

CLAIM.

The claimant claims to be ranked and preferred as a riding claimant to the amount of £80 upon the free fund *in medio* in room and place of the said D., and as a rider upon his claim.

PLEA IN LAW.

The claimant being a creditor of the said D., having used arrestments in the hands of the arrestee, and the debt due to him by the said D. being liquid and constituted, he is entitled to be ranked and preferred on the free fund *in medio* in terms of his claim.

NOTE.—*A creditor has no title to claim in a multiplepoinding funds to which his debtor has right, except by way of a riding claim upon a claim lodged by his debtor* (*Gill's Trs.*, 1889, 16 *R.* 403), *and his debt must be liquid and constituted* (*Wilson*, 1851, 13 *D.* 1366).

2. To Determine Right to Goods.

Sheriffdom of at .

A. [*designation*], trustee on the sequestrated estates of M. [*designation*], *Pursuer* and *Real Raiser*,

against

B. [*designation*], *Common Debtor*, C. and D. [*designations*], all *Defenders*.

The demand of the pursuer is—

For exoneration, as the holder of a motor car bearing as the maker's name and number "The De Dion Bouton Co., Ltd., No. 136," and the registered mark "S—20," delivered in June 1910 by the common debtor to the said M., and arrested in pursuer's hands by the defenders, who claim to be creditors of the said common debtor.

Therefore the pursuer craves the Court—

To find that pursuer as the holder, as trustee aforesaid, of the said motor car, which is claimed by the defenders, is liable only in once and single delivery thereof, and is entitled on delivery to be exonered thereof, and to obtain payment of his expenses; and to decern in favour of the party or parties who shall be found to have best right thereto.

CONDESCENDENCE.

1. The pursuer is the trustee on the sequestrated estates of the said M., conform to . As such trustee he is holder of the said motor car which is claimed by the defenders, creditors or pretended creditors of the said M. [*State circumstances* (e.g. *arrestments*) *in which double distress has arisen.*]

2. The pursuer is willing to deliver said motor car to such party or parties as shall be found entitled thereto, but, in consequence of the competing claims which have been made, he is not in safety to deliver the said subject to any of the said claimants, and the present action has thus been rendered necessary.

PLEA IN LAW.

The pursuer should be found liable only in once and single delivery of the subject *in medio*, and is entitled, after delivery thereof to the parties who shall be found to have right thereto, to exoneration and payment of his expenses.

3. To Determine in whose Favour a Feu-Charter should be executed.

(Cf. *Governors of Merchant Maiden Hospital*, 1902, 10 *S. L. T. No.* 207.)

Sheriffdom of at .

A. [*designation*], heritable proprietor of the lands of X., *Pursuer* and *Real Raiser*,

against

B. [*designation*], executor of the deceased M. [*designation*], nominated

by and acting under his settlement, dated 19 and registered 19 , and C. and D. [*designations*], *Defenders.*

The demand of the pursuer is—

For exoneration, as the superior of the lands of X. and as such of the plot of ground [*describe it*], of his obligation to grant a feu-charter of said plot, which plot pursuer had contracted to feu to the said M., and which is now claimed by the defenders, as representing the said common debtor.

Therefore the pursuer craves the Court—

To find that as superior of said plot of ground he is liable only in once and single execution and delivery of a feu-charter of said lands; that he is entitled, on said execution and delivery, to be exonered of his liability under the said contract, entered into between himself and the said M., and to obtain payment of his expenses; and to decern in favour of the party or parties who shall be found to have best right to the lands and subjects *in medio.*

CONDESCENDENCE FOR PURSUER AND REAL RAISER.

1. M. [*designation*] died on , leaving a settlement, dated and registered , by which he nominated B. [*designation*] to be his executor. B. accepted office, and was duly confirmed. By said settlement M. left certain pecuniary legacies, and bequeathed the residue of his estate to C. [*designation*]. He was survived by D. [*designation*], who is his heir-at-law. An extract of said settlement is produced herewith.

2. Some time before his death, M. entered into an agreement with the pursuer as superior of the lands of X., described in the prayer of this petition, as to the terms of a feu of said lands which was to be granted to him by the pursuer. In accordance with the conditions of said agreement, he was not to receive a charter of the said ground until the buildings to be erected thereon had been so far erected as to furnish security for the feu-duty. At the date of his death the said buildings (a small cottage) had been erected, and a feu-charter had been prepared and submitted to and approved of by him in draft, but had not been executed. In his said settlement no mention is made of said feu, and there is no express conveyance of heritage.

3. A question has arisen as to whether said feu passes to the executor under the will, or whether M. died intestate *quoad* said lands, so that they pass to D., his heir-at-law. Both parties have requested the pursuer to grant a feu-charter in their favour, and the pursuer is willing to grant said charter to the party entitled thereto.

4. In these circumstances the present action has been rendered necessary for the determination of said question, and for the exoneration of the pursuer in regard to his liability under said contract with M.

5. The value of the said plot of ground and the buildings thereon does not exceed the sum of £50 by the year, or £1000 value.

Pleas in Law for Pursuer and Real Raiser.

1. The pursuer is only liable to execute one feu-charter relative to the lands libelled.

2. Upon the pursuer executing said feu-charter in favour of the party or parties who shall be found entitled thereto, he is entitled to be exonered in terms of the prayer of the petition, with expenses.

Condescendence and Claim for B. [*designation*], Executor, &c.

1. This claimant adopts and holds as repeated *brevitatis causâ* articles 1 and 2 of the condescendence annexed to the petition.

2. [*State facts upon which claim is founded.*]

Claim.

This claimant claims that the pursuer should execute in his favour, as executor foresaid, a feu-charter by him as superior of the plot of ground described in the prayer of the petition, in terms of the agreement entered into between the pursuer and the said M.

Pleas in Law for B. (M.'s Executor).

1. On a sound construction of the will of the deceased M., the same was intended by him to be, and was a general settlement of his whole estates, heritable and moveable, and had the effect of carrying the same to his executor for realisation and distribution.

2. Under the said will, the right to the feu-charter, which it had been arranged between M. and the pursuer should be granted in his favour by the pursuer, passed to his executor, and the claimant, as such executor, is accordingly entitled to have executed, and the pursuer is bound to execute, said charter in his favour.

Condescendence and Claim for D. [*designation*].

1. This claimant adopts and holds as repeated *brevitatis causâ* articles 1 and 2 of the condescendence annexed to the petition.

2. [*State facts upon which claim is founded.*]

CLAIM.

This claimant claims that the pursuer should execute in his favour a feu-charter, &c. [*as in preceding claim*].

PLEAS IN LAW FOR D.

1. The claimant, as heir-at-law of the deceased M., is entitled to execution of a feu-charter as claimed.

2. The right to said feu-charter not having been conveyed by said settlement, the claimant is entitled to execution of a feu-charter as claimed.

4. By Trustees under Trust-Disposition and Settlement for Distribution of Trust Funds.

Sheriffdom of at .

A. and B. [*designations*], trustees of the late M. [*designation*], nominated by and acting under his trust-disposition and settlement, dated and registered , *Pursuers* and *Real Raisers*,

against

C., D., and E. [*designations*], *Defenders.*

The demand of the pursuers is—

For exoneration, as the holders of the sum of £1000, being the whole estate so far as recovered falling under the trust-disposition and settlement of the said deceased M., which sum is claimed by the defenders.

Therefore the pursuers crave the Court—

To find that, as trustees aforesaid, and as holders of the said sum of £1000, they are liable only in once and single payment or consignation thereof, and are entitled, on payment or consignation, to be exonered thereof, and to obtain payment of their expenses; and to decern in favour of the party or parties who shall be found to have the best right to the fund *in medio.*

CONDESCENDENCE.

1. The pursuers are the trustees of the late M. [*designation*], nominated by and acting under his trust-disposition and settlement, dated and registered . The said M. died on .

2. The said M. was survived by two sons, the defenders C. and D., and E., the only issue of a predeceasing son G. Besides these children, the said M. had two other sons, R. and T., who in 18 emigrated to

Australia. At the time of their departure the said R. and T. were both married. In the year 19 the said T. returned to this country, and died here on 19 . He was then a widower and without family, and stated that, so far as he knew, his brother R. had died a widower some time previously without issue.

3. By his trust-disposition and settlement, M. [*state provisions shortly—so far as material*].

4. The pursuers, in endeavouring to carry out the purposes of the said trust-disposition and settlement, have made investigations as to the persons who are entitled to the property thereby disponed. So far as they can ascertain, they are the defenders, the said C., D., and E., and the pursuers know of no other parties on whom the summons should be served; but the pursuers are unable to ascertain definitely whether there may not be any other parties entitled to share in the said trust-estate and effects, and in the circumstances they are under the necessity of raising this action for their exoneration.

5. The fund *in medio* consists of—

Sum on deposit-receipt with the Bank of Scotland .	£980
Sum in the hands of the pursuers . . .	20
	£1000

PLEA IN LAW.

[*Take in from Form No.* 1, supra.]

5. By Executor against Creditors of Deceased.

Sheriffdom of at .

A. [*designation*], executor-dative of the deceased M. [*designation*], *Pursuer* and *Real Raiser*,

against

The said A., and B., C., and D. [*designations*], *Defenders.*

The demand of the pursuer is—

For exoneration, as the holder of £100, being the whole estate so far as recovered of the said deceased M., which sum is claimed by the defenders as creditors of the said M. for goods supplied and monies advanced to him.

Therefore the pursuer craves the Court—

To find that, as the holder of said £100, the pursuer as executor foresaid is liable only in once and single payment thereof, and is entitled, on payment or consignation, to be exonered thereof and to obtain payment of his expenses; and to decern in favour

of the party or parties who shall be found to have best right to the fund *in medio*.

CONDESCENDENCE.

1. The said M. died intestate on , and the pursuer, who is his next of kin and sole heir *ab intestato*, was appointed his executor-dative, conform to confirmation by the Sheriff of in his favour, dated .

2. The estate belonging to the deceased M. at the date of his death, so far as has been recovered by or come into the possession of the pursuer, consists of [*state details*], amounting in all, after payment of Government duties and expenses of realisation, to the sum of £100, which is the fund *in medio*.

3. The defenders, the said B., C., and D., are all creditors of the said M. for goods supplied and monies advanced to him, and have lodged claims upon the said estate amounting in all to £300. The pursuer is willing to make payment of said estate to such parties as shall be found entitled thereto, but as certain of the said creditors claim that they have a preferential right to payment of their claims out of the fund *in medio*, he is not in safety to pay the said sum, or any part of it, to any of said claimants, and the present action has thus been rendered necessary.

PLEA IN LAW.

[*Take in from Form No.* 1, supra.]

6. For Distribution of Sum Due by Creditor under s. 150 of the Bankruptcy (Scotland) Act, 1856.

(*See also* BANKRUPTCY, No. 32.)

Sheriffdom of at .

(*Under the Bankruptcy (Scotland) Act*, 1856.)

A. [*designation*], a creditor on the sequestrated estates of M. [*designation*], *Pursuer* and *Nominal Raiser*,

against

B., C., and D. [*designations*], *Defenders* and *Real Raisers*.

The demand of the pursuer is—

For exoneration as the holder of £100, which sum consists of (1) double the amount of a payment of £20 given by the said M. to the pursuer and nominal raiser as a secret and collusive consideration for his concurring in an application by the said M.

for his discharge under the Bankruptcy Acts, and (2) £60, being the amount of the claim for which pursuer was ranked in M.'s sequestration.

Therefore the pursuer craves the Court—

To grant warrant for service hereof upon the nominal raiser, to order intimation hereof in the *Edinburgh Gazette*, and to ordain the nominal raiser to consign the said sum of £100 in the hands of the Clerk of Court, and on consignation to exoner him: To find that the pursuer has forfeited his right to his debt of £60 and the dividends thereon: To decern in favour of the party or parties who shall be found to have best right to the fund *in medio* according to their respective rights and interests; and to find the real raiser entitled to his expenses out of the fund *in medio*.

CONDESCENDENCE.

1. On the estates of M. [*designation*] were sequestrated by the Sheriff of , under the Bankruptcy (Scotland) Act, 1856, and Acts amending and explaining the same.

2. The bankrupt having, at a meeting of his creditors held on or about , made an offer of composition to his creditors, and the said offer having been accepted at another meeting held on or about , the said Sheriff pronounced a deliverance discharging the bankrupt, declaring the sequestration at an end, and reinvesting the bankrupt in his estates.

3. The pursuer was a creditor of the said M., and the defenders aver that in carrying through said composition settlement, the bankrupt entered into a secret and collusive agreement and transaction with the pursuer, whereby the pursuer, on or about , obtained from the bankrupt a preference or payment or consideration amounting to the sum of £20 for concurring in, facilitating, and obtaining the bankrupt's discharge.

4. The defenders are creditors of the said M. who were ranked [*or* entitled to be ranked] in the said sequestration, and have not received full payment of their debts against the bankrupt.

5. The fund *in medio* consists of—

(1) Double the amount of said preference of £20 .	£40
(2) The amount of the pursuer's debt claimed by him in said sequestration	60
	£100

6. The present action is brought under and in terms of the Bankruptcy (Scotland) Act, 1856, sec. 150.

PLEA IN LAW.

The pursuer having been guilty of a secret and collusive transaction with the bankrupt as libelled, contrary to the provisions of the Bankruptcy (Scotland) Act, 1856, he is liable in payment of the sums concluded for, and decree should be granted as craved.

7. By Creditors to Share in Proceeds of Furthcoming (Bankruptcy (Scotland) Act, 1856, s. 12).

(*See also* BANKRUPTCY, No. 37.)

Sheriffdom of at .

A. [*designation*], *Pursuer* and *Nominal Raiser*,

against

B., C., and D. [*designations*], *Defenders* and *Real Raisers.*

The demand of the pursuer is—

For exoneration, as the holder of £100 obtained by him as creditor of M. [*designation*], who was constituted notour bankrupt on 19 , under a decree of furthcoming dated , and claimed by defenders as creditors of the said M. as due under arrestments used by them in the hands of .

Therefore the pursuer craves the Court—

To find that as the holder of the sum of £100 he is liable only in once and single payment thereof, and is entitled, on payment or consignation, to be exonered thereof, and to obtain payment of his expenses; and to grant decree in favour of the party or parties who shall be found to have best right to the fund *in medio.*

CONDESCENDENCE.

1. The pursuer and the defenders, the said A., B., C., and D., are creditors of M. [*designation*], who was constituted notour bankrupt on 19 . [*State grounds of debt.*]

2. On 19 the pursuer used arrestments in the hands of for the sum of £ , and on obtained a decree of furthcoming and preference, and thereupon recovered payment of the sum of £100, which is the fund *in medio.* [*State details.*]

3. The defenders being creditors of the said M., and having used

arrestments in security of their debts upon 19 in the hands of the said for the sum of £ , now claim to participate in proportion to their respective debts and interests in the sum recovered.

4. The pursuer is willing to have the fund distributed in proportion to the respective rights of parties, under deduction from the said fund of the expenses of recovering the same and of his expenses in the present action.

PLEAS IN LAW.

1. The pursuer having by the use of his diligence recovered payment from the said M. of the amount forming the sum *in medio*, and the defenders claiming also to be creditors of the said M., and being desirous to participate in the fund, the present action is necessary.

2. The pursuer is entitled *primo loco* to have the expenses of his diligence and his expenses in the present action paid out of the fund *in medio*.

NOTE.—*When the value of the fund* in medio *does not exceed* £20, *an action of multiplepoinding may be brought in the Small Debt Court. The forms of summons and of claims are provided by statute—Small Debts Act*, 1837, *Schedule E* (cf. *Small Debts Act*, 1837, *sec.* 10; *Small Debt Amendment Act*, 1889, *secs.* 1 *and* 2).

Municipal Elections.—*See* ELECTIONS.

Mutual Wall.—*See* GABLES; INSPECTION.

Name, for Authority to Alter.

NOTE.—*It is not necessary for a person desiring to change his name to obtain the authority of the Court to do so* (*Furlong*, 7 *R.* 910). *The only exceptions to this rule are persons holding office under the Crown, notaries public, and perhaps law-agents.*

See also TRADE MARKS AND NAMES.

Navigation, Damages for Failure to Remove Obstruction to.—*See* REPARATION; SHIPPING.

Negligence.—*See* REPARATION.

New Election.—*See* ELECTIONS, No. 7.

Next-of-Kin.—*See* EXECUTOR.

Non-Entry.—*See* DECLARATOR.

Nuisance.—*See also* PUBLIC HEALTH ACT, 1897.

NOTE.—*The essentials of nuisance are a dangerous, offensive, unnatural, or unusual use of property by one person causing material injury to the life, comfort, or property of another person.*

The action usually takes the form of interdict and damages, or of declarator, interdict, and damages. Whoever is affected by the nuisance may sue, and the person causing or contributing to cause the nuisance may be called as defender.

There is a persistent misapprehension in the minds of laymen as to what is an adequate defence to an action for abatement of nuisance. This applies in particular to the following defences, all of which are irrelevant —(1) *that pursuer came to the nuisance,* (2) *that the nuisance is a necessary part of operations for the public good,* (3) *that the nuisance is in the most convenient place,* (4) *that the defender only contributes to a nuisance which would still subsist though he ceased operations, and* (5) *that pursuer himself is causing a nuisance. If it be impossible for the defender to abate the nuisance, interdict may be refused, but he will be liable in damages so long as the nuisance continues.*

Certain offences against public health are declared nuisances by statute (*Public Health Act,* 1897, *sec.* 16). *On the Local Authority lies the primary duty of enforcing the statute. Should they fail to do so, their rights may be assumed by certain other parties enumerated in the Act. See* infra, PUBLIC HEALTH ACT.

A number of acts are also declared nuisances by the Burgh Police Act, 1892. *In such cases proceedings are at the instance of the burgh fiscal, and in the forms prescribed in the Act.*

1. Pollution of Stream.

(*a*) DECLARATOR AND INTERDICT.

(*See* DECLARATOR, No. 8.)

(*b*) Interdict.

The provisions of the Rivers Pollution Acts of 1876, 1893, *and* 1898 *should be kept in view. See* infra, Pollution of Rivers.

Sheriffdom of at .

A. B. [*designation*], proprietor of the lands of X. in the parish of Y. and county of Z., *Pursuer*,

against

C. D. & Co. [*designation*], *Defenders.*

The demand of the pursuer is—

For interdict against defenders from polluting the X. burn, passing through pursuer's lands of X., by permitting or discharging refuse or other noxious matter from their S. mills into said burn.

Therefore the pursuer craves the Court—

To interdict the defenders from discharging or putting into the X. burn [*or* any other stream, drain, or ditch], passing through [*or* along] the pursuer's lands of X., any [*state the noxious substances, e.g.* sewage *or* spent wash, burnt ale and spent lees, *or* water impregnated with arsenic, vitriol, or other dye-stuffs], or any other impure or deleterious matter or liquid, whereby the water of the said X. burn [or the said streams, ditches, and drains] may be polluted or rendered unfit for domestic or primary uses [or hurtful to the pursuer's salmon fishings]; and to grant interim interdict; and to find the defender liable in expenses.

Condescendence.

1. The pursuer is proprietor of the lands and estate of X. in the county of Z. The defenders have recently acquired and are now proprietors and occupiers of the S. mills, which adjoin the pursuer's lands of X.

2. The defenders' said S. mills are bounded on the east side by the X. burn, which thereafter passes through the pursuer's lands of X. for a distance of about miles, during which course it is used by the pursuer and his tenants and dependants for domestic and other primary uses.

3. From their erection in 18 until they were acquired by the defenders in 19 , the said S. mills were used for the manufacture of , and during the said period no injurious use was made of the waters of the X. burn, nor was any deleterious matter discharged into it from the said works.

4. The defenders, on acquiring the said works, converted them into a factory for manufacturing . In the course of said manufacture the defenders take from the X. burn large quantities of water, which is used in the process of , and is thereafter returned to the said burn in a polluted and noxious state, being impregnated with or other deleterious matter, and thereby rendered unfit for domestic use or for the watering of cattle and other uses. The said pollution has also affected the trees and vegetation bordering on the said stream, and otherwise injured the amenity of the pursuer's said lands of X.

[*If fishings or any special interests of the pursuer are being injuriously affected, these should be specially condescended on.*]

5. The pursuer has repeatedly required the defenders to cease from polluting the said X. burn, but without effect, and the present action is therefore necessary.

PLEAS IN LAW.

1. The pursuer, as proprietor foresaid, being entitled to the use of the said stream in its natural condition, and free from any pollution caused by the defenders, interdict should be granted as craved.

2. The defenders having polluted the said X. burn as libelled, the pursuer is entitled to have them interdicted as concluded for.

2. For Order to Execute Works to Prevent Percolation of Sewage.

(*See also* PUBLIC HEALTH ACTS.)

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For an order on the defender, in terms of the Public Health (Scotland) Act, 1897, to provide efficient drainage of the yard or stable on his property in X. Street, Y., adjacent to pursuer's house, No. 2 of said street.

Therefore the pursuer craves the Court—

To ordain the defender to cut a drain or to take such other measures as may be necessary to carry away through the ground belonging to him at the foul and offensive water or fluids at present coming from his said ground at to the ground

adjacent thereto belonging to the pursuer, and failing his doing so within such time and at the sight and to the satisfaction of such person as may be appointed by the Court, to grant warrant to the pursuer to enter on the defender's said ground and to carry out the necessary works as aforesaid; and on the expense thereof being ascertained, to grant a decree against the defender for payment thereof to the pursuer; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The defender is proprietor of a house and yard at No. 2 X. Street, Y., and the pursuer is proprietor of the piece of ground adjacent to the said premises on the east.

2. The defender has recently erected a stable and byre on said yard, and he also uses it for the purpose of washing the vans used by him in connection with his business as a . No proper arrangements have been made by the defender for the drainage of his said yard or the stable and byre therein, and as the pursuer's property lies at a lower level the dirty water and sewage from the defender's ground flows down to the pursuer's property.

3. The pursuer has repeatedly called upon the defender to provide proper drainage for the removal of the said foul water and sewage, but he refuses or delays to do so, and the present action has thus been rendered necessary.

PLEA IN LAW.

The pursuer's property being injured by the nuisance complained of, he is entitled to have the defender ordained to remove the same, and failing his doing so to have warrant to remove it at the defender's expense.

3. For Interdict against Noxious Business.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator that the business carried on by defender at Street, , is a nuisance, and for interdict and interim interdict against his continuing to carry it on.

Therefore the pursuer craves the Court—

To declare that the business of [as carried on by the defender] in his said premises is a nuisance, and to interdict defender from carrying on said business [in the manner hitherto carried on by him or] in any [other] manner whereby noxious vapours may be caused to annoy the pursuer or his tenants in the house No. ; and to grant interim interdict; and to find the defender liable in expenses.

NOTE.—*If the business has not yet been commenced, and interdict is asked against its commencement as being inherently a nuisance, the parts within brackets will be omitted.*

CONDESCENDENCE.

1. The pursuer is proprietor of the house No. . The defender is a , and carries on business at , adjoining the pursuer's said premises on the north.

2. For several years the defender has carried on the business of a in the said premises. In or about the month of June of the present year, the defender introduced into his said premises apparatus for [*state the operation causing the nuisance, detailing any particular process giving rise to the smell complained of*].

3. As a result of these operations, the pursuer's said house has been rendered almost uninhabitable. The defender's premises at are quite unsuitable for such a business as the defender is now carrying on there. Whenever the said apparatus is at work great volumes of noxious and noisome vapour are emitted from the defender's premises, to the detriment of the surrounding properties, and to the annoyance of their inhabitants. The pursuer has had numerous complaints from his tenants in said house, and several have left on account of the said nuisance, and for the loss so occasioned to him he reserves his claim of damages.

4. The pursuer has repeatedly called upon the defender to desist from carrying on the business of in said premises, or at least to take such steps as will prevent the emission of noisome and noxious effluvia, but the defender has refused to comply with pursuer's request, and the present application is thus necessary.

PLEA IN LAW.

The operations complained of being in excess of the defender's rights, and being a nuisance to the pursuer and his tenants, interdict and interim interdict should be granted as craved.

4. For Removal of Manure Heap.

This is under the Public Health Act, 1897, *sec.* 16 (5) *et seq.*

Sheriffdom of at .

A. B. [*designation*], *Pursuer*

[*see Public Health Act*, 1897, *sec.* 152, *for who may be pursuer*],

against

C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For an order on defender, under the provisions of sec. 16 of the Public Health (Scotland) Act, 1897, to remove an accumulation of manure in the yard attached to his said premises.

Therefore the pursuer craves the Court—

To find that there exists an accumulation of manure in the yard attached to No. 2 X. Street, in the burgh of Y., within 50 yards of various dwelling-houses in said burgh, and that said accumulation is a nuisance within the meaning of the Public Health (Scotland) Act, 1897: To find that the defender is the author of said nuisance: To ordain the defender to remove the said accumulation of manure, and failing his doing so within such period as the Court may appoint, to find the defender liable in a penalty of 10s. per day during his failure to comply with the said order, and on the removal of the said accumulation to interdict the defender from again accumulating or depositing manure in the said yard; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is the sanitary inspector of . The defender is a dairyman, and carries on business at No. 2 X. Street, Y.

2. Attached to the defender's said premises is a yard in which are situated two byres and a stable, used by the defender in connection with his business.

3. For some time past the defender has been in the habit of depositing considerable quantities of manure from the said byres and stable at a place in the said yard. The said deposit of manure is within 50 yards of several dwelling-houses in the said burgh, viz. the houses Nos. 4 and 6 X. Street, occupied by , and the house No. 11 X. Street, occupied by . The said deposit of manure is thus a nuisance within the meaning of the Public Health (Scotland) Act, 1897.

4. By sec. 16 (5) of the said statute, it is provided [*quote*].

5. The defender has been called upon to remove the said nuisance, but he refuses or delays to do so, and the present action is thus necessary.

PLEA IN LAW.

The defender being the author of the nuisance complained of, he should be ordained to remove the same, and interdicted from causing or allowing it to recur.

5. For Discontinuance of Smoke Nuisance.

This is under the Public Health Act, 1897, *sec.* 16 (9) *and* (10). *It is competent* only *in the Sheriff Court* (*sec.* 22). *As to appeal, see sec.* 156.

Sheriffdom of at .

A. B. [*designation—see sec.* 152], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For an order restraining defender from allowing smoke injurious to the public health to be emitted from the chimney of his said works.

Therefore the pursuer craves the Court—

To find that the defender is the author of a nuisance within the meaning of the Public Health (Scotland) Act, 1897, by causing or suffering the chimney of his works at to send forth smoke so as to be injurious to health: To ordain the defender to discontinue the said nuisance, and to interdict him from causing or allowing it to recur, and that under the penalties provided in the said Act; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is sanitary inspector of . The defender is a manufacturer, and carries on business at Y. mill, X.

2. For some time past the defender has caused or allowed the chimney of his works to send forth smoke, so as to be injurious to health. In particular, he did so on the following dates:—[*State specifically the occasions complained of, giving day and hour, and the length of time the nuisance continued.*]

3. By sec. 16 of the Public Health (Scotland) Act, 1897, it is provided [*quote the parts of the section bearing on the nuisance complained of*].

4. The defender has been called upon to discontinue the said

nuisance, but he refuses or delays to do so, and the present action has thus been rendered necessary.

PLEA IN LAW.

The defender being the author of the nuisance complained of, should be ordained to discontinue the same, and interdicted from causing or allowing it to recur.

6. For Interdict against Noise and Vibration.

(*See* INTERDICT, No. 8.)

7. For Order to Shut up Impure Well.

This is under the Public Health Act, 1897, *sec.* 16 (3).

Sheriffdom of at .

A. B. [*designation—see sec.* 152], *Pursuer*,

against

C. D., &c. [*designations*], *Defenders.*

The demand of the pursuer is—

For an order, in terms of sec. 16 of the Public Health (Scotland) Act, 1897, to shut up the well known as the X. well, situated in Y. Street in the village of Z., as being injurious to the public health.

Therefore the pursuer craves the Court—

To find that the water of the said well is so tainted with impurities, or otherwise unwholesome, as to be injurious to the health of persons using the same; and in the event of the Court being of opinion, after such inquiry as it may think necessary, that the said well cannot be purified so as to be used with safety, to ordain the same to be shut up: To interdict the defenders and all others from using the same: To grant interim interdict; and to find any of the defenders appearing and opposing this application liable in expenses.

CONDESCENDENCE.

1. The pursuer is the sanitary inspector for . The defender C. D. is the proprietor of the houses Nos. 10 to 16 Y. Street, Z. The other defenders are the occupants of the said houses.

2. There is no proper water supply within the said houses, and the occupants thereof obtain their water for all domestic uses from an old well immediately in front of the said houses, known as the X. well.

3. For some time past the pursuer has suspected that the water of the said well was tainted with sewage or other impurities, and was injurious to the health of the persons using it. In order to test the said water he recently had samples thereof analysed by . A copy of the analyst's report is herewith produced.

4. By sec. 16 of the Public Health (Scotland) Act, 1897, it is provided [*quote so much of the section as bears on the particular nuisance complained of*].

5. The present action is necessary in order to have the said well shut up.

PLEA IN LAW.

The said well being a nuisance within the meaning of the Act condescended on, and not being able to be purified, ought to be shut up.

8. For Interdict against Prospective Nuisance.

This was most commonly of use to prevent the establishment of noxious or offensive trades, but as practically all such must now, under sec. 32 *of the Public Health Act,* 1897, *be sanctioned by the local authority, these cases are not likely to arise. There may, however, be cases of trades or operations which will plainly be offensive, but which have not been declared offensive businesses under the Public Health Act. In such cases the local authority may proceed under sec.* 36 *of the Act of* 1897. *The style of proceeding will be similar to that in the preceding forms under the Public Health Act.*

9. For Warrant to Enter and Inspect Premises Suspected to be Insanitary.

This is under sec. 18 *of the Public Health Act,* 1897.

Sheriffdom of at .

A. B. [*designation—see secs.* 18 *and* 152], *Pursuer,*

against

C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For warrant, in terms of sec. 18 of the Public Health (Scotland) Act, 1897, to enter and inspect the defender's said premises.

Therefore the pursuer craves the Court—

To take the oath of the pursuer to his belief on reasonable grounds that defender has failed to make adequate sanitary provision in his said premises: To ordain the defender to admit the pursuer

and to inspect the premises at , at any hour between nine o'clock in the morning and six o'clock in the evening; and in the event of the defender failing or refusing to obey the said order, to find him liable in a penalty not exceeding £5; and to grant warrant to the pursuer and to obtain immediate forcible entry into the said premises; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is sanitary inspector of the , and the defender is occupant of the factory known as the R. mill in X.

2. The pursuer has been recently informed that the defender has failed to make adequate sanitary provision in the said premises. He accordingly applied to the defender for permission to enter and inspect said premises along with , the medical officer of health of the said burgh, but the defender refused said permission.

3. By sec. 18 of the Public Health (Scotland) Act, 1897, it is provided [*quote section*] [*or (see sec.* 154 *of the Act), if preferred, state that*]. In the circumstances condescended on the pursuer is making oath that he has reasonable grounds for believing a nuisance to exist in the said premises within the meaning of the Public Health (Scotland) Act, 1897.

PLEA IN LAW.

The pursuer having reasonable grounds for believing that a nuisance exists within the said premises, and being refused entry thereto, is entitled to warrant in terms of the prayer of the petition.

Oath, Reference to.—*See* MINUTE, No. 18.

Ob non solutum canonem.—*See* DECLARATOR, No. 5.

Occupy and Possess.—*See* IMPLEMENT, Nos. 3, 4; LEASES.

Oversman.—*See* AGRICULTURAL HOLDINGS ACT; ARBITRATION.

Parent and Child.—*See* ALIMENT; DELIVERY; GUARDIANSHIP OF INFANTS.

Parish.—*See* Elections; Church; Churchyard; Registration of Births, &c., *infra.*

Parish Council.—*See* Relief, No. 5.

Partnership.—*See also* Accounting, No. 5; and Declarator, No. 28.

Note.—*There would seem to be no objection to a petition for dissolution only being presented in the Sheriff Court, either at common law or under the Act* (cf. *Partnership Act*, 1890, *sec.* 45). *But a petition for the appointment of a judicial factor on a partnership estate after dissolution is not competent in the Sheriff Court* (*Rowe*, 1872, 9 *S. L. R.* 492, *per Ld. Pres.*), *although it is thought that the Sheriff may appoint a factor pending litigation for preservation of the estate* (cf. *Drysdale*, 1842, 4 *D.* 1061; *Thoms on Judicial Factors*, *2nd ed.*, *pp.* 518, 519).

For Dissolution of Partnership.

Sheriffdom of at .

[*At common law and under the Partnership Act*, 1890, *sec.* 35.]

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For a decree dissolving the partnership between pursuer and defender.

Therefore the pursuer craves the Court—

To pronounce a decree dissolving the partnership of A. B. and C. D., and ordaining the defender to concur with the pursuer in all acts necessary and proper for the public notification of the same; and to find the defender liable in expenses in the event of his offering opposition hereto.

Condescendence.

1. On the pursuer and defender entered into partnership [*state the objects of the partnership and the partnership deed, if any*].

2. [*State the grounds on which dissolution of partnership is sought*, e.g., *lunacy or misbehaviour. The narrative portion of the petitions in the Court of Session*, supra, *indicate the nature of the averments required, and can easily be adapted.*]

PLEA IN LAW.

The defender having become permanently incapable of performing his part of the partnership contract [*or* having wilfully committed a breach of the partnership agreement], as condescended on, decree should be pronounced as craved.

Passive Title, Action on.

NOTE.—*In practice, the only case where this may prove of use is against a vitious intromitter with the deceased's moveables.*

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], executor of the deceased M. D. [*designation*], or as vitious intromitter with his estate and effects, or otherwise representing him on one or other of the passive titles known to law, *Defender*.

The claim of the pursuer is—

For payment by the defender of £ in respect of goods supplied to the deceased M. D., conform to statement hereto attached, with whose effects defender has intromitted.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and with expenses; [and to grant warrant, &c.].

CONDESCENDENCE.

1. The pursuer is a grocer in X., and the defender is a farm labourer there.

2. Between the 19 and 19 the deceased M. D. incurred to the pursuer an account for groceries amounting to £ . A copy of the said account, which was duly rendered to the deceased, but which has not been paid, is herewith produced and referred to.

3. The said M. D. died on 19 , and the defender, who is his only brother and lived with him, thereupon took possession of the deceased's estate and effects, and has intromitted therewith.

4. The defender is thus liable to the pursuer in the amount of the said account, either as vitious intromitter with the estate of the said M. D., or as his executor or as representing him on one or other of the passive titles known to law.

PLEA IN LAW.

The deceased M. D. having been at the time of his death due and resting-owing to the pursuer the sum sued for, the defender, as intromitter with the estate of or otherwise representing the said M. D., is liable to the pursuer in payment thereof.

Patent.—*See* INFRINGEMENT; INTERDICT.

Payment.

NOTE.—*Numerous other forms of actions for payment will be found under the heads of the matter out of which the claim arises,* e.g., REPARATION; SHIPPING, *&c.*

1. For Payment of Open Account.

(*See* ACCOUNT.)

2. For Payment of Wages.

(*See also* MASTER AND SERVANT.)

ALTERNATIVE CONDESCENDENCE TO THAT GIVEN UNDER HEADING MASTER AND SERVANT.

1. On or about 19 the pursuer was engaged by the defender as a farm servant for the half-year from Whitsunday to Martinmas 19 , at the wage for said period of £ , with board and lodging.

2. The pursuer duly entered upon the defender's employment, and remained therein until the expiry of the said period of service on 19 . On the said date the pursuer applied to the defender for payment of the wages due to him in terms of his contract of service, viz., £ , but the defender declined to pay the same, alleging that [*state any excuse given for the refusal, and deny or explain the facts and their validity as an answer to the demand*].

3. The pursuer has both personally and by letter applied for payment of his said wages, but the defender refuses to pay the same, and this action is therefore necessary.

PLEA IN LAW.

The defender being due to the pursuer the sum sued as condescended on, decree should be pronounced therefor, with interest, as craved.

3. By Holders of a Bill against Drawer and Acceptor.

(*See also* BILL OF EXCHANGE.)

Sheriffdom of at .

A. B. & Co. [*designation*], *Pursuers*,

against

C. D. [*designation*] and E. F. [*designation*], jointly and severally, *Defenders*.

The claim of the pursuer is—

For payment by the defenders, jointly and severally, to pursuers of £ , the sum contained in a bill of exchange, dated 19 , drawn by defender E. F. upon and accepted by defender C. D. at three months' currency.

Therefore the pursuers crave the Court—

To grant a decree against the defenders, conjunctly and severally, for payment to the pursuers of £ sterling, with interest thereon from [*date of maturity*] until payment, with expenses; [and to grant warrant to arrest on the dependence].

CONDESCENDENCE.

[NOTE.—*If the bill is prescribed, the debt must be libelled on, and the bill may be founded on as evidence of the debt* (*Campbell's Trs.*, 22 *R.* 943). *If the transaction in connection with which the bill was granted is to be disputed, it is generally the best policy for the pursuer to state his version at the outset. It is assumed there are no such complications.*]

1. By bill dated 19 , drawn by the defender E. F. upon and accepted by the defender C. D., the defender C. D. obliged himself three months after the said date to pay to the said E. F. the sum of £ sterling for value received.

2. The said bill was blank indorsed by the said E. F. to the pursuers.

3. The said C. D. failed to meet the said bill at maturity, and it still remains unpaid, although application has been made to both defenders for payment of the contents thereof.

PLEA IN LAW.

The defenders being conjunctly and severally due to the pursuers the sum sued for, the pursuers are entitled to decree as concluded for.

4. For Payment of a Debt due to a Person Deceased at the Instance of his Executor.

Sheriffdom of at .

R. S. [*designation*], executor-dative of the late A. B. [*designation*] [*or* trustee and executor of the deceased A. B. [*designation*]], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender of £ for goods supplied by pursuer to the deceased A. B. conform to account hereto attached.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from [*or* from the date of citation] and expenses.

CONDESCENDENCE.

1. The pursuer is the executor-dative of the deceased A. B. [*designation*], conform to decree-dative in his favour by the Sheriff of , and testament-dative, dated 19 , herewith produced [*or* The pursuer is trustee and executor of the deceased A. B. [*designation*], acting under his trust-disposition and settlement, dated 19 , and recorded in the Books of Council and Session 19 , *or as the case may be*]. The defender is .

2. The defender was at the date of the death of the said A. B. indebted to him in the sum of £ for goods supplied, conform to account, commencing 19 and ending 19 , herewith produced and referred to.

3. The pursuer has applied to the defender for payment to him, as executor [*or* trustee] foresaid, of the amount of the foresaid account, but he delays or refuses payment, and the present action is necessary.

PLEA IN LAW.

The sum sued for being due and resting-owing to the pursuer, as executor [*or* trustee] foresaid, the pursuer is entitled to decree therefor as craved.

5. For Payment of Legacy.

For the case where the validity of the testamentary writing bequeathing the legacy is challenged, see DECLARATOR, No. 22.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

R. T. and M. S. [*designations*], trustees and executors of the deceased C. B. [*designation*], *Defenders*.

The claim of the pursuer is—

For payment by the defenders of £ , bequeathed by the trust-disposition and settlement of the deceased C. B., dated 19 , to the pursuer as a legacy.

Therefore the pursuer craves the Court—

To grant a decree against the defenders for payment to the pursuer of the said legacy of £ , free of [*or* less] legacy duty, and with interest thereon from [*date of death, unless there be a special provision declaring that no interest shall run until payment or the expiry of a certain period*] till payment; and with expenses.

[*If from the terms of the bequest there is doubt as to its validity in any particular*, e.g., *the beneficiary or the amount, a declarator may be combined with the payment, as in the following form of prayer*:—

To find and declare that under the said trust-disposition and settlement the pursuer is entitled to a legacy of £ sterling [free of legacy duty]; and to grant a decree against the defenders for payment to the pursuer of £ [less legacy duty], with interest thereon from [*see note*, supra] till payment; and to find the defenders liable in expenses.]

CONDESCENDENCE.

1. The pursuer is a niece of the said deceased C. B., being a daughter of his brother D. B. The defenders are the trustees and executors acting under his trust-disposition and settlement, dated 19 , and recorded in the Books of Council and Session 19 .

2. The said C. B. died on , unmarried and without issue. By his said trust-disposition and settlement he bequeathed his whole means and estate to the defenders as trustees for the ends, uses, and purposes therein mentioned.

3. By the fourth purpose of the said trust-disposition and settlement the trustees were directed "to pay to each of my nieces, A. B. and M. B., daughters of my brother D. B., the sum of £

sterling free of legacy duty." The pursuer's sister, the said M. B., predeceased the testator, having never been married.

4. The pursuer has repeatedly applied to the defenders for payment of the said legacy in her favour, but they decline or delay to pay the same, and this action is thus necessary.

PLEA IN LAW.

The said legacy being due and payable to the pursuer in terms of the said trust-disposition and settlement, the defenders, as trustees and executors thereunder, are bound to make payment thereof to her as craved.

[*Or a simple plea of resting-owing*:—

The defenders, as trustees and executors foresaid, being due and resting-owing to the pursuer the sum sued for, decree therefor should be granted as craved.]

[*If a declarator is inserted in the prayer, a plea in the following terms may be added*:—

The pursuer being entitled under the purpose of the said trust-disposition and settlement to a legacy of £ [free of legacy duty], decree of declarator should be pronounced as first concluded for].

6. For Payment of Legitim.

[*Instance as in last Form.*]

The demand of the pursuer is—

For an accounting by the defenders of their intromissions with the moveable estate of the said deceased C. B., and for payment to the pursuer of £ as legitim due him as one of C. B.'s children.

Therefore the pursuer craves the Court—

To ordain the defenders to produce an account of their intromissions, as trustees foresaid, with the moveable estate of the said deceased C. B., and to grant a decree against the defenders for payment to the pursuer of £ , or such other sum as may appear to be the amount of the pursuer's legitim as one of the children of the said C. B., with interest thereon from [*date of death*] till payment; and failing their producing such account, to grant a decree against the defenders for payment to the pursuer of £ , with interest as aforesaid; and in any event to find the defenders liable in expenses.

CONDESCENDENCE.

1. The pursuer is a son of the said C. B., who died on 19 . The defenders are the trustees under his trust-disposition and settlement, dated 19 , and registered in the Books of Council and Session 19 .

2. The said C. B. was survived by his wife, Mrs. M. R. or B., and by two sons, the pursuer and D. B., and one daughter.

3. Under the said trust-disposition and settlement, the pursuer is entitled to an annuity of £ per annum, payable weekly. He has no other interest under the said settlement, the whole of the estate thereby conveyed, amounting, it is believed, to over £ , most of which is moveable, being divided between the pursuer's mother and his elder brother and sister.

4. On 19 the pursuer wrote to the defenders claiming his share of legitim out of his said father's estate, and asking for accounts showing the amount of the legitim fund. To that letter the defenders replied acknowledging its receipt and promising accounts as soon as convenient. The pursuer has since then repeatedly applied to the defenders for the said accounts and for payment of his share of legitim, but without effect, and the present action is thus necessary.

PLEAS IN LAW.

1. The pursuer, as one of the lawful children of the said C. B., is entitled to legitim out of his estate.

2. The defenders, as trustees on the estate of the said C. B., are bound to account for and pay to the pursuer his share of legitim therefrom.

7. For Payment of Demurrage.

(*See also* DEMURRAGE.)

Sheriffdom of at .

The A. Company, Limited, B. Street, , *Pursuers*,

against

The X. Company, Limited, Y. Street, , *Defenders*.

The claim of the pursuers is—

For payment by the defenders of £ as demurrage due under a charter-party, dated , by which the defenders chartered the s.s. from pursuers.

Therefore the pursuers crave the Court—

To grant a decree against the defenders for payment to the pursuers

of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The pursuers are the owners of the s.s. , of . The defenders are coal exporters, and carry on business as such at Y. Street, .

2. By charter-party, dated 19 , the defenders chartered the said s.s. from the pursuers. By the said charter-party it was *inter alia* agreed that the should [*quote the clauses of the charter-party referring to loading and demurrage*].

3. The arrived at the port of , to which she had been ordered by the charterers on [*day and date*], and was docked about o'clock A.M. On the same day her master intimated in writing to the charterers' agents there, Messrs. , that he was ready to load.

4. [*Narrate the loading and the circumstances causing the delay.*]

5. The loading of the was not commenced until [*day and date*], and was not completed until [*day and date*] at o'clock P.M. The said ship was thus on demurrage from o'clock A.M. of [*day and date*] till o'clock P.M. on [*day and date*], a period of hours. [From this period there falls to be deducted, in terms of the charter-party, hours, during which the ship was engaged in bunkering, leaving hours as the net period of demurrage.]

6. For the said demurrage of hours the defenders are responsible, and are liable therefor to the pursuers at the rate of per hour, fixed by the charter-party, amounting in all to £ . [From this sum there falls to be deducted per cent. address commission, payable to the defenders in terms of the charter, amounting to £ , leaving a balance of £ , being the sum sued for.]

7. The pursuers have applied to the defenders for payment of the said sum of £ , but they refuse or delay to pay the same, and the pursuers have thus been forced to raise the present action.

PLEA IN LAW.

The said vessel having been detained on demurrage through the failure of the defenders to provide and load a cargo in terms of the charter-party, or otherwise through the fault of the defenders, the pursuers are entitled to the sum sued for as demurrage, in terms of the charter-party, as craved.

Or,

[The demurrage sued for having been incurred through the fault of the defenders, the pursuers are entitled to decree therefor, in terms of the charter-party, as craved.]

8. For Value of Work done under Contract, and Damages for Breach of Contract.

(*See also* CONTRACT.)

NOTE.—*In actions for the value of work done under a contract, the writ sometimes takes the form of a crave for a remit to a measurer to value the work, and for decree against the defender for payment of the value so found. This seems of doubtful competency* (*Sutherland*, 25 *R.* 656).

Sheriffdom of at .

B. & D., builders and contractors, No. Street, ,
Pursuers,

against

R. F., residing at Crescent, , *Defender.*

The claim of the pursuers is—

For payment by the defender of £ as the value of the work executed by the pursuers for the defender under a contract, dated , for the mason and brick-work of a house to be erected at No. Street, and of £ as damages caused to pursuers by defender's breach of said contract.

Therefore the pursuers crave the Court—

To grant a decree against the defender for payment to the pursuers of £ , with interest from the date of citation, and expenses; [and to grant warrant, &c.].

CONDESCENDENCE.

1. By contract, dated 19 [*or* by offer, dated 19 , and acceptance thereof, dated 19], the pursuers agreed to execute for the defender the mason and brick-work of a house to be erected at No. Street, , according to plans and specifications prepared by M. N., Esq., architect, , at the prices contained in a preliminary measurement of the said works appended to and forming part of the said contract. A copy of the said contract is herewith produced and referred to.

2. On or about 19 the pursuers commenced the said works, and carried on the same in accordance with the said plans and

specifications until 19 , on which date they received from the defender a letter, herewith produced, requesting them to stop the works, as he proposed to make certain alterations on the plans. The pursuers accordingly withdrew their workmen.

3. On 19 the pursuers received from the defender what he called amended plans and specifications for the work. The said plans and specifications showed a much smaller building than that originally contracted for, and one entirely different in its construction and much more expensive to execute. [*Give details of the salient changes, and how these would affect the prices.*]

4. The pursuers represented to the defender that they could not execute the work shown on the amended plans, &c., at the rates originally contracted for, but offered to do them at an increase of 10 per cent. on the contract prices. The defender declined to agree to this increase, and claimed that the pursuers were bound by their contract to execute the work shown on the amended plans at the original contract prices.

5. On 19 the pursuers wrote to the defender declining to proceed with the work on these terms; and on 19 the defender intimated to the pursuers that he had made a new contract with Messrs. T. & Sons, builders, for the execution of the work, and requiring them to remove any of their plant on the site.

6. The pursuers have already executed work and supplied materials for the said contract, for which, under the contract, they are entitled to be paid at the prices in the said measurement. The value of the said work and materials is not less than £ , and is the sum first concluded for.

7. The pursuers have also purchased materials, and prepared work, and otherwise incurred expenses in connection with the said works, and they will further be prevented from making the profit which they would have made out of the contract. For the damages so caused to the pursuers by the defender's breach of contract, which are not less than the sum second sued for, the pursuers are entitled to reparation.

8. The pursuers have applied to the defender for payment of the sum first sued for, and of damages for the said breach of contract, but he declines to make payment thereof.

Pleas in Law.

1. The pursuers having executed work and supplied materials under and in terms of the contract libelled, are entitled to payment therefor in terms of the said contract.

2. The pursuers having incurred expense and been deprived of the profit on the contract libelled, through the defender's failure to implement the same, are entitled to damages as craved.

3. The defender having broken the contract libelled as condescended on, is liable to the pursuers in reparation therefor.

9. For Payment of Liquidate Damages.

For where liquidate damages will be enforced, see Clydebank Engineering, &c., Co. v. *Yzquierdo y Castaneda, L. R.* [1905] *A. C.* 6; 42 *S. L. R.* 74; *and Elphinstone* v. *Monkland Iron and Steel Co.*, 11 *Ap. Cas.* 332. *It would appear that it must at least be "a genuine pre-estimate of the creditor's probable or possible interest in the due performance of the principal obligation," not a mere exorbitant and unconscionable claim, to be held* in terrorem *over the contractor.*

Sheriffdom of at .

A. B. & Co. [*designation*], *Pursuers,*

against

C. & D., Limited, shipbuilders, Glasgow, *Defenders.*

The claim of the pursuers is—

For payment by the defenders of £ as liquidate damages due under a contract, dated , between pursuers and defenders, for the building of a screw steamship, in consequence of defenders' failure to deliver said ship within the specified time.

Therefore the pursuers crave the Court—

[*Sometimes a declaratory conclusion to the effect that the defender has failed to complete the work contracted for within the time specified, and so has incurred the penalty provided, is inserted before the crave for payment, but it seems superfluous.*] To grant a decree against the defenders for payment to the pursuers of £ sterling, with interest from the day of 19 until payment; and with expenses.

CONDESCENDENCE.

1. By contract, dated 19 , between the pursuers and the defenders, the latter undertook to build for the pursuers, at the price of £ , a screw steamship of the dimensions and materials and finished and fitted up according to plans and specifications signed as relative to the said contract.

2. By the article of said contract it was provided, that

the said ship should be finished complete and ready for sea, and delivered afloat to the pursuers, on or before 19 . And by the article thereof it was provided, that "in the event of the builders making default in the delivery of the ship by the date stipulated, they shall pay to the said A. B. & Co. the sum of £ per week, in name of liquidated damages, until the ship is duly completed ready for sea and delivered."

3. The defenders proceeded with the building of the said vessel, but failed to complete her within the specified time, and it was not until 19 , weeks after the date contracted for, that she was completed, ready for sea, and delivered to the pursuers.

4. In consequence of their failure to complete and deliver the said vessel to the pursuers within the specified time, the defenders are liable to pay to the pursuers the sum stipulated in the contract, viz. £ per week for weeks, in all £ , as liquidated damages for the said delay. This is the sum sued for.

5. The pursuers have suffered loss, injury and damage through the defenders' breach of contract as above libelled to at least the extent of the sum sued for. The pursuers have claimed payment from the defenders of the said sum sued for, but they deny the validity of the said claim, and this action is thus necessary.

PLEAS IN LAW.

1. The sum sued for being due and resting-owing to the pursuers as liquidate damages in respect of the defenders' failure to complete and deliver the said vessel within the period contracted for, the pursuers are entitled to decree therefor, with expenses.

2. The pursuers having suffered loss, injury and damage through the defenders' failure to complete and deliver the said ship within the time contracted for to at least the amount of the sum sued for, are entitled to decree as craved.

3. Or otherwise, the pursuers having suffered loss, injury and damage through the defenders' breach of contract as libelled, are entitled to decree for the sum sued for in name of damages therefor, with interest and expenses as craved.

10. For Payment of Rent.

Sheriffdom of at .

A. B. [*designation*], proprietor of the house No. X. Street, Y., *Pursuer*,

against

C. D. [*designation*], tenant of said house, *Defender*.

The claim of the pursuer is—

For payment by the defender of £ as the rent of said house for the half year from Martinmas 19 .

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the term of Martinmas 19 , and expenses.

CONDESCENDENCE.

1. By missive, dated 19 , herewith produced, the pursuer let to the defender the house, No. X. Street, Y., for the year from Whitsunday 19 to Whitsunday 19 at the annual rent of £ , payable half-yearly.

2. On 11th November last the pursuer called on the defender for payment of the half-year's rent then due under the said lease, but was requested by the defender to call again next week. The pursuer called again the next week, and has also repeatedly written and called since, but without obtaining payment, and the said rent, amounting to £ , is still due.

PLEA IN LAW.

The rent sued for having become due and payable at the term of Martinmas 19 , the pursuer is entitled to decree therefor, with interest from said term.

11. For Payment of Sum Due under Guarantee.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender of £ due under a letter by defender to pursuer, dated , whereby defender guaranteed payment of the price of all timber required by X. & Sons, builders, Dundee, for the erection of a house at No. Green Street, Dundee, on the faith of which pursuer sold timber to the said X. & Sons to the value of £ , for which pursuer cannot obtain payment.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. On 19 the defender granted in favour of the pursuer a letter of guarantee in the following terms:—"Dundee, 19 .—I guarantee payment of the price (not exceeding £) of all timber required by Messrs. X. & Sons, builders, Dundee, for the carpenter and joiner work of the house now being erected by them at No. Green Street, Dundee, with power to you to take their bills or other obligation or security, and to give time for payment for each month's account, not exceeding [three] months from the termination of each month's account. (Signed) C. D. To Mr. A. B., timber merchant, Dundee."

2. On the faith of the said guarantee, between 2nd and 30th June 19 , the pursuer sold and delivered to the said Messrs. X. & Sons, for the said house, timber to the value of £ , conform to account herewith produced. The said X. & Sons granted their bill, dated 19 , for the said sum of £ at months' date (the usual currency of bills in the timber trade).

3. On the said bill falling due on 19 it was duly presented for payment to the said X. & Sons, but they failed to meet it. It was accordingly duly protested at the pursuer's instance, and the protest registered in the Sheriff Court books of Forfarshire at Dundee on 19 .

4. The pursuer did diligence upon the said protest against the said X. & Sons, and the partners thereof, but could not recover the contents of the said bill, or any part thereof.

5. The defender has been applied to for payment of the said sum of £ in terms of his letter of guarantee, but he refuses or delays to pay the same, and this action is thus rendered necessary.

PLEA IN LAW.

The defender being bound in terms of his letter of guarantee libelled on to pay the sum sued for, decree should be granted as craved.

12. For Payment of Sum Due under Insurance Policy.

The case assumed is a marine insurance policy, where it has been agreed to sue one of the underwriters only as a test case.

Sheriffdom of at .

A. B. & Co. [*designation*], *Pursuers*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuers is—

For payment by the defender of £ , the sum underwritten by defender on a time policy of insurance on the s.s. belonging to pursuers on , and of £ expended by the pursuers in safeguarding the hull of said ship after she had been sunk off the coast of on 19 , and had been abandoned to the underwriters as a total loss, but who refused to accept said abandonment.

Therefore the pursuers crave the Court—

To grant a decree against the defender for payment to the pursuers (first) of £ with interest from 19 till payment; and (second) of £ , or such other sum as may be found to be due by the defender to the pursuers in respect of expenditure incurred or to be incurred by them under the suing and labouring clause of the said policy of insurance effected by the pursuers with the defender [and others] on the hull materials, &c., of the ship , with interest from the date of citation, and with expenses.

CONDESCENDENCE.

1. The pursuers are owners of the , a steel vessel, ship-rigged, of tons register, and registered at the port of Glasgow. The defender is .

2. On or about 19 the pursuers effected an insurance on the hull materials, &c., of the said ship for £ on time policies for the period from 19 to 19 . Of the said sum of £ , £ , the sum first sued for, was underwritten by the defender.

3. On 19 the said , while at anchor off the coast of , was struck and sunk by a squall, which is one of the perils of the sea insured against by the said policies. On receiving information of this, the pursuers at once communicated it to the underwriters. They also procured and furnished to the underwriters all further possible information as to the condition of the ship.

4. Being satisfied from the information received that the said ship could not be raised and repaired except at an expense greatly in excess of her value when raised and repaired, the pursuers on 19 gave notice of abandonment of the ship to the underwriters, including the present defender, which notice, however, the underwriters, including the defender, refused to accept. The said ship then was and still is a constructive total loss.

[5. All the said policies of insurance contain a "suing and labouring" clause to the effect that [*quote clause*]. In consequence of the underwriters' refusal to accept the said notice of abandonment, it has been necessary for the pursuers to expend, in looking after and safeguarding the hull of the said ship up to the raising of this action, a sum of £ . Of this sum a share is due by the defender under the said "suing and labouring" clause.]

6. The defender declines to pay either of the sums sued for, and the present action is thus necessary. [The other underwriters have intimated that they agree to regard this action as a test case, and will acquiesce in the decision thereof, and, in the event of the pursuers being successful, will pay to them the several sums underwritten by them, and also payments under the suing and labouring clauses proportionate to the sum for which the defenders may be found liable.]

PLEAS IN LAW.

1. The said ship having become a constructive total loss during the period and through the perils insured against under the said policies, the pursuers are entitled to decree in terms of the first conclusion of the crave.

2. The pursuers having incurred the sum second sued for in safeguarding and protecting the said ship in accordance with the suing and labouring clause of the said policies, are entitled to decree therefor as craved.

13. For Payment of Sum Due under Life Policy.

Sheriffdom of at .

A. B. [*designation*], executor-nominate of the deceased C. B. [*designation*], *Pursuer*,

against

The X. Life Assurance Company [*address of registered office, and if that is not within the jurisdiction, add*, and carrying on business at [*address of office within jurisdiction*]], *Defenders*.

The claim of the pursuer is—

For payment by the defenders of £ , the amount contained in a policy of assurance, No. , dated , upon the life of the said deceased C. B., issued by defenders to the said C. B., and payable to his executors.

Therefore the pursuer craves the Court—

To grant a decree against the defenders for payment to the pursuer

of £ , with interest from 19 till payment, and with expenses.

CONDESCENDENCE.

1. The pursuer is the executor of the deceased C. B. under his testament, dated , and with codicil thereto, dated , recorded in the Sheriff Court books of shire 19 .

2. By policy, No. , dated , the defenders undertook to pay to the heirs, executors, administrators, or assigns of the said C. B., within months after proof of his death, the sum of £ sterling. The said policy is herewith produced and referred to. The premiums on the said policy of assurance were duly paid by the said C. B., the last premium having been paid on , conform to receipt produced.

3. At various times during the currency of the said insurance, bonuses thereon were declared by the defenders, amounting in all to £ .

4. The said C. B. died on 19 , and on 19 notice of the death, with certificate thereof, and also certificates by the deceased's medical attendant and by a personal friend, as required by the defenders, were duly forwarded to them.

5. [*State the reasons why the defenders decline to pay the amount of the insurance.*]

PLEA IN LAW.

The sum sued for being due and resting-owing by the defenders to the pursuer in terms of the policy and notices of bonuses condescended on, the pursuer is entitled to decree as craved.

Penalty, for Payment of.—*See* BANKRUPTCY, No. 31.

Perishable Goods, for Sale of. — *See* MOTION, No. 21.

Plenish.—*See* IMPLEMENT, Nos. 3, 4, 5; LEASES; SEQUESTRATION.

Poaching.—*See* INTERDICT.

Poinding (Personal).—*See also* BANKRUPTCY; INTERDICT, Nos. 3, 17; REPARATION.

1. For Recovery of Goods Removed in Breach of Poinding.

NOTE.—*The form given is under the Debtors Act,* 1838, *sec.* 30. *A simple action of damages is also competent, and is usually the best and, in the case of a Company, the only remedy. The sum stated in the petition is double the appraised value of the goods.*

Sheriffdom of at .

A. B. [*designation*], *Pursuer,*
against
C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For a decree ordaining defender to restore to the premises No. Street, , certain goods belonging to E. F. [*designation*], and poinded at pursuer's instance on , and failing restoration or payment of £ to the pursuer, for the imprisonment of defender.

Therefore the pursuer craves the Court—

To ordain the defender to restore to the said premises [*detail goods removed*], and in the event of the defender failing to restore the said articles to the said premises within the period to be fixed by the Court, to grant warrant to officers of Court to apprehend the defender and commit him to the prison of , therein to be detained until he restore the said effects or pay the sum of £ sterling to the pursuer; and to find the defender liable in expenses.

CONDESCENDENCE.

1. On 19 the pursuer, upon the warrant contained in an extract decree of your Lordship's Court against the said E. F., poinded goods belonging to him in his house at No. Street, , conform to execution of poinding herewith produced.

2. On or about 19 the defender, who is a brother-in-law of the said E. F., in breach of the said poinding, removed from the said house the articles enumerated in the following list, which were all included in the pursuer's poinding, and which had therein been valued at the respective prices stated, viz. [*detail articles removed, numbering them consecutively, and stating the appraised value opposite each article*].

3. The defender, who was a witness for the defender at the trial of the action against the said E. F., was well aware of the said poinding, and also that in removing the said articles he was committing a breach of poinding. The pursuer also, immediately on learning of their removal, intimated to the defender that he had committed a breach of poinding, and required him to restore the articles removed, but this he declines to do.

4. The total value of the articles so removed, conform to the appraisement in the poinding, is £ , and in the event of the defender not forthwith restoring them, the pursuer is, under and in terms of sec. 30 of the Debtors Act, 1838, entitled to have the defender imprisoned or else to be paid by him double the said appraised value as concluded for.

PLEA IN LAW.

The defender having removed the articles libelled in breach of the pursuer's poinding, should be ordained to restore them under pain of imprisonment, or otherwise to pay to the pursuer double their value as appraised in the said poinding.

2. For Damages for Excessive Poinding.

NOTE.—*This is now very rare, unless where the goods poinded have some special value, such as pictures, rare books, or articles of vertu* (*see Le Conte*, 8 *R.* 175). *The sheriff-officer and his cautioner may, if desired, be conjoined as defenders* (*Le Conte*, supra).

[*Instance as in preceding form.*]

The claim of the pursuer is—

For payment by the defender [*or if the officer is sued*, defenders jointly and severally] of £ with interest, in respect that S. O. [*designation, or* the defender S. O.], on the instructions of defender [*or* the defender C. D.], executed on 19 a wrongful and excessive poinding of pursuer's effects in his house at No. Street, .

Therefore the pursuer craves the Court—

To grant a decree against the defender [*or* defenders jointly and severally] for payment to the pursuer of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. On 19 the defender [C. D.] obtained decree against the pursuer in the Sheriff Court of at for the sum of £14, with 7s. 8d. of expenses.

2. On 19 , on the instructions of the defender [C. D., the defender], S. O. executed a poinding of effects belonging to the pursuer in his house at No. Street, . In appraising the pointed effects, no attempt was made to ascertain their real value, but they were entered at mere random sums.

3. In particular, five valuable paintings which were included in the said poinding were valued in one lot at £3. The said paintings were by well-known artists, and were of the value of at least £50. The pursuer was at the time absent from home, but his wife informed the said S. O. of the value of the said paintings, but he paid no attention to her remonstrances.

4. On 19 , on the defender [C. D.]'s instructions, the said pointed articles were sold, when, although there had been no adequate advertisement or intimation of the valuable character of the articles to be sold, they realised £52, 10s. 4d., or about four times the amount of the defender's claim.

5. The pursuer has intimated to the defender[s] his claim for reparation for his [their] wrongful, reckless, and excessive poinding and sale of the said effects, but they refuse or delay to make such reparation, and the present action is thus necessary.

PLEA IN LAW.

The poinding and sale by the defender[s] of the pursuer's goods as libelled having been reckless and wrongful and in excess of his [their] legal rights, the pursuer is entitled to reparation therefor as craved.

3. For Damages for Wrongous Poinding.

(*See* REPARATION.)

4. For Participation in Proceeds of Poinding.

(*See* BANKRUPTCY, Nos. 37, 38.)

Poinding of the Ground.

NOTE.—*Poinding of the ground is a process by which the creditor in a* debitum fundi *poinds the whole moveables upon the security subjects belonging to the debtor and his tenants. It is competent to the creditor in a real burden by reservation, to a superior for his feu-duties and casualties (if taxed), or to the creditor in a bond and disposition in security. It is not*

competent where the security is in the form of an ex facie *absolute disposition. Two or more security holders, although over the same subjects, cannot combine to raise one action, but in Douglas* v. *Tait,* 1884, 12 *R.* 10, *it was held* (dub. *Ld. Rutherfurd Clark*) *this objection came too late after warrant for sale had been granted. All creditors heritably secured on the subjects must be called. Service of the summons puts a* nexus *on all moveables on the subjects at the date of service, and interpels the heritable proprietor from allowing others to acquire right over them* (*Lyons* v. *Anderson,* 1880, 8 *R.* 24).

The extract decree is sufficient warrant to poind.

Where both maills and duties and poinding of the ground are competent, the conclusions may be combined in one writ.

The summons should not be served by post, nor should accepted service be allowed.

1. Against Debtor and Tenants.

If the debtor alone is in possession, leave out all reference to tenants.

In the Sheriff Court the poinding can be executed on an extract of the decree without letters of poinding under the signet (*Kennedy,* 14 *D.* 513).

Sheriffdom of at .

C. R. [*designation*], *Pursuer,*

against

D. E. [*designation*], heritable proprietor of the lands of X. in the parish of Y. and county of Z., principal debtor; and the following tenants and occupants of the same, viz. R. T. [*designation*], and M. P. [*designation*], *Defenders.*

The demand of the pursuer is—

For warrant to poind the moveable effects on the said lands of X., or in the houses or other erections thereon, over which pursuer holds a bond and disposition in security for £ , dated and recorded , by which said heritable subjects were disponed to pursuer in security of his said debt, and for payment of the said principal sum, interest, and penalties.

Therefore the pursuer craves the Court—

To grant warrant to officers of Court to enter upon said lands and the houses, buildings, and other erections thereon, and in name and authority of the Court to search for, poind, and distrain the readiest moveable goods, gear, effects, corns, cattle, horses, sheep, and insight plenishing, household furniture, machinery, fittings, tools, stock-in-trade [*omit such of these as are not applicable*], and

all other moveable goods and effects poindable or distrainable of the said defenders, on the said lands and pertinents [*or* within or upon the subjects and others described in the said bond and disposition in security, viz. All and Whole, &c.] [*as described in bond or other deed constituting the real burden*], or in the houses, buildings, and other erections thereon, but in so far as relates to the defenders other than the said D. E., to the amount of the rents or payments only which may be due and payable by each of them respectively at the time, or from time to time, for each of their respective possessions of the said lands and others, the terms of payment of the said rents being first come and bygone [*X*]; and to make payment thereof to the pursuer in satisfaction or to account of the sum of £ , liquidate penalty and termly failures, contained in and due under the said bond and disposition in security, with the interest on said principal sum, payable at and half-yearly and termly at each term of Whitsunday and Martinmas thereafter till paid (the terms of payment being first come and bygone); and further, to grant decree for expenses against the said D. E., defender, in any event, and also, in the event of their offering opposition hereto, against the other defenders; and meantime to grant warrant to officers of Court to inventory and secure the said goods, gear, and other effects.

CONDESCENDENCE.

1. The pursuer is a merchant in Glasgow. The defender D. E. is heritable proprietor of the subjects described in the prayer of the petition, and the other defenders are the tenants and occupants of said subjects. [*If known, specify amount of their rents.*]

2. By bond and disposition in security granted by the defender D. E. in favour of the pursuer, dated , and recorded in the General Register of Sasines applicable to the county of the , both days of , the said D. E. bound and obliged himself, his heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to pay to the pursuer the principal sum of £ sterling at the term of 19 , within the head office of the Bank in , with penalty in case of failure, and interest thereof at the rate of 5 per centum per annum from the date of the said bond and disposition in security during the not-payment of the said principal sum, payable half-yearly at the terms of Whitsunday and Martinmas.

3. In security of the personal obligation above narrated, the said

D. E., by the said bond and disposition in security, disponed to the pursuer and his foresaids, heritably but redeemably as therein mentioned, yet irredeemably in the event of a sale by virtue thereof, All and Whole the subjects and others therein specified and described, and that in real security to the pursuer and his foresaids of the whole sums of money therein written, principal, interest, and penalties.

4. The defender D. E., after granting the said bond and disposition in security, continued, and it is believed and averred still continues, to possess [*describe shortly subjects possessed by D. E.*], which form part of the subjects and others contained in the said bond and disposition in security. The remainder of the said subjects have been let by the said D. E. to the defenders R. T. and M. P., *videlicet* [*describe the subjects possessed by R. T.*], at the annual rent of £ , payable half-yearly, and [*describe the subjects possessed by M. P.*], at the annual rent of £ , payable half-yearly.

5. The defender D. E. is due and resting-owing to the pursuer the principal sum of £ , contained in the said bond and disposition in security, and the interest thereof since the term of 19 , and the stipulated penalties in consequence of the irregularity in payment of the interest upon the said principal sum. The pursuer has called up the loan, but he has not received payment of any part of the said principal, interest, or penalties, and the present action is therefore necessary.

PLEA IN LAW.

The said principal sum, interest, and penalties being due and resting-owing to the pursuer by the principal debtor, and being *debita fundi* on the subjects and others libelled, the pursuer is entitled to decree of poinding and for payment as concluded for, with expenses.

2. Poinding of the Ground and Maills and Duties.

NOTE.—*The short form of maills and duties authorised by the Heritable Securities Act*, 1894, *is of no advantage here, as the tenants must be called for the poinding of the ground. The old style of maills and duties is still competent* (*Heritable Securities Act*, 1894, *sec.* 2).

The style is the same as the preceding, except an additional conclusion in the prayer and a second plea in law.

ADDITIONAL CONCLUSION.

Take in at [*X*] *in preceding style.*

Further, to grant a decree against the defenders F. T. and M. P. for payment to the pursuer of the rents, maills, and duties of their

several possessions of the foresaid lands, subjects, and others, each for his own part, and that during their possession thereof respectively, and the not-redemption of the said lands, subjects, and others, with interest from the respective dates at which the same are or shall become due until paid, viz., the said F. T. the sum of £ sterling, and the said M. P. the sum of £ sterling, due by them respectively at Martinmas 19 for the half-year preceding, and the like sums of £ and £ respectively half-yearly thereafter during their respective possessions of the said lands, subjects, and others, or at least so much of the said rents as will satisfy and pay to the pursuer the principal sum of £ sterling, interest and penalties after mentioned.

ADDITIONAL PLEA IN LAW.

2. The pursuer being entitled in virtue of the said bond and disposition in security to enter into possession of the subjects and others libelled, and uplift the rents thereof, decree of maills and duties should be pronounced as craved.

Policies of Insurance.—*See* DECLARATOR, No. 21; PAYMENT, Nos. 12 and 13.

Pollution of Rivers.—*See also* DECLARATOR; NUISANCE, No. 2.

NOTE.—*Under the Rivers Pollution Prevention Act*, 1876, *provision is made for preventing the pollution of "streams," that term including rivers, streams, canals, lakes, watercourses (other than those mainly used as sewers at the date of the Act and flowing into unpolluted tidal waters), and such parts of the sea and tidal waters as may, after inquiry, be fixed by the Secretary for Scotland.*

The pollutions prohibited are—(sec. 2) solid refuse, (sec. 3) sewage, (sec. 4) polluting liquid from factories, and (sec. 5) polluting matter from mines.

Proceedings under secs. 2 and 3 may be commenced by either the local authority or any person aggrieved by the pollution. Offenders under secs. 4 and 5 can only be proceeded against by the local authority, and with the previous consent of the Secretary for Scotland. The local authority includes the public health local authority, the county council (Local Government Act, 1889, sec. 55), or a joint committee of the councils interested (as to rivers on the border between England and Scotland, see 61 & 62 Vict. c. 34).

Before commencing proceedings, two months' written notice must be given to the offender. The action must be raised in the Sheriff Court, and may be appealed by special case to the Court of Session.

1. For Prohibition.

Sheriffdom of at .

The County Council of the County of X., *Pursuers*,

against

The Y. Company, Limited [incorporated under the Companies Acts and having their registered office], at , *Defenders.*

The demand of the pursuers is—

For a decree prohibiting the defenders from polluting the Z. Burn.

Therefore the pursuers crave the Court—

To ordain the defenders to abstain from causing, or knowingly permitting to fall or flow, or to be carried into the stream commonly called or known as the Z. Burn, any poisonous, noxious, or polluting liquid refuse from their shale oil work at aforesaid; and to find the defenders liable in expenses.

CONDESCENDENCE.

1. The pursuers are empowered by sec. 55 of the Local Government (Scotland) Act to enforce all the provisions of the Rivers Pollution Prevention Acts, 1876 and 1893, in relation to so much of any stream as is situate within or passes through or by any part of the county of X. The defenders are proprietors of and carry on a shale oil work at in the county of X. Said shale work is a factory, and the work carried on therein is a manufacturing process within the meaning of sec. 4 of the Rivers Pollution Prevention Act, 1876.

2. The said shale work is situate near to the Z. Burn, which is situate within and passes through the said county of X. The said Z. Burn is a stream within the meaning of sec. 20 of the Rivers Pollution Prevention Act, 1876.

3. The pursuers have recently caused certain inquiries to be made as to the sources of pollution of the said Z. Burn. As a result of these inquiries, they have found that the defenders have been and still are causing to fall or flow, or knowingly permitting to fall or flow or be carried into the said Z. Burn, large quantities of poisonous, noxious, or polluting liquids, and in particular sulphuric anhydride, ammonia, and the tarry matters produced in the manufacture of paraffin oil, and other shale products or other poisonous, noxious, or polluting liquids proceeding from their said oil works, or from manufacturing processes

carried on by the defenders therein, and are thereby committing an offence against sec. 4 of the Rivers Pollution Prevention Act, 1876.

4. The defenders have taken no effectual means for rendering harmless the said poisonous, noxious, or polluting liquids proceeding from their said manufacturing processes, although such means are reasonably practicable and available.

5. The pursuers have applied for and obtained the consent of the Secretary for Scotland to the institution of the present proceedings.

6. On or about the pursuers gave notice to the defenders in terms of sec. 13 of the Rivers Pollution Prevention Act, 1876. A copy of the said notice is produced herewith.

7. Notwithstanding the said notice, the defenders have continued and still continue the said pollution, and have not taken any means to remedy the same.

PLEA IN LAW.

The defenders having polluted the said stream in breach of the statute, the pursuers are entitled to have them ordained to abstain from doing so in future.

2. For Interdict against Pollution by Sewage.

Sheriffdom of at

A. B. [*designation*], proprietor of the estate of M. in the parish of N. and county of Y., *Pursuer*,

against

C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For a decree interdicting defender, by himself or others, from causing or permitting sewage or other noxious matter to be discharged into the X. Burn flowing through pursuer's said estate and rendering it unfit for primary uses.

Therefore the pursuer craves the Court—

To interdict the defender from discharging or permitting others for whom he is responsible to discharge into the stream known as the X. Burn, in the parish of Y., by sewers, drains, pipes, or in any manner of way, any sewage or other impure or noxious matters of any kind, or polluting the water of the said stream, and rendering it unfit for primary uses in its passage through the pursuer's property; and to grant interim interdict: To ordain the defender forthwith to cut off and remove from all connection with the said stream all sewers, drains, or pipes constructed by

him for the discharge of sewage or other impure or noxious matter into the said stream; and failing the defender so cutting off and removing said sewers, drains, or pipes within such time as the Court may appoint, to authorise the pursuer, at the sight and to the satisfaction of such person as may be appointed by the Court, to cut off and remove the same; and on the cost of said operations being ascertained, to grant a decree against the defender for payment thereof to the pursuer; and to find defender liable in expenses.

Condescendence.

1. The pursuer is proprietor of the estate of M., in the parish of N. A stream or burn known as the X. Burn flows through part of the pursuer's said estate. The water of said stream is used by several of the pursuer's tenants for the supply of their houses and steadings, and for the supply of bestial grazing in their fields.

2. The defender is a distiller, and proprietor of Distillery, which is situated close to the banks of the said X. Burn. Said distillery was constructed about ten years ago.

3. Soon after the construction of the said distillery, the defender constructed a sewer, drain, or other channel connecting the said distillery with the said stream. The pursuer is not aware whether at the time of its construction the said sewer or drain was used for conveying distillery refuse into said stream, but as the quality of the water flowing through his said estate was unimpaired, he took no steps in the matter.

4. The defender has within the last few months begun to discharge large quantities of sewage and distillery refuse into the said stream by means of said sewer or drain. The result of these operations has been that the quality of the water in said burn has been greatly impaired. The water has thus been rendered quite unfit for use for drinking by man or beast.

5. The pursuer has repeatedly called upon the defender to desist from discharging sewage and other refuse into said stream, but he refuses or delays to do so, and the present application has thus been rendered necessary.

Plea in Law.

The pursuer having right to the use of said stream in its natural condition, interdict should be granted as craved.

3. For Penalty for Failure to Comply with Order to Remove Pollution.

Sheriffdom of at .

The County Council of the County of X., *Pursuers*,
against
The A. B. Company, Limited [*address*], *Defenders*.

The demand of the pursuers is—

For a finding that defenders have incurred the penalties provided by sec. 10 of the Rivers Pollution Prevention Act, 1876, in respect they have failed to comply with the order pronounced by the Court on , ordaining them to abstain from polluting the river X., and for payment of £ , the amount of said penalty.

Therefore the pursuers crave the Court—

To find that the defenders have failed to comply with the order pronounced by the Court on 19 , ordaining them to abstain from causing, or knowingly permitting, to fall or flow or be carried into the river Z. any poisonous or noxious or polluting fluid, and particularly , and that they have in breach of said order on several occasions between 19 and 19 , and particularly on 19 , caused to fall or flow, or knowingly permitted to fall or flow, or be carried into the said river Z., quantities of the said : To find that the defenders have thereby incurred the penalties provided on that behalf by the 10th section of the Rivers Pollution Prevention Act, 18 : To grant a decree against the defenders for payment to the pursuers, or such other person as the Court may direct, £ , with interest from the date of the decree hereon; and to find defenders liable in expenses.

CONDESCENDENCE.

1. The pursuers are the County Council of the county of X. The defenders are distillers, and carry on business at the Y. Distillery.

2. On or about 19 , in an action at the instance of the pursuers against the defenders, the defenders were ordained to abstain from causing to fall or flow, or knowingly permitting to fall, flow, or be carried into the river Z., any poisonous or noxious or polluting fluid, and particularly the substance known as .

3. Notwithstanding the terms of said order, the defenders have on various occasions failed to abstain from polluting said river in terms

thereof. In particular, on [*set out in detail occasions on which the defenders have contravened the order*].

PLEA IN LAW.

The defenders having failed to comply with the order libelled, decree should be pronounced in terms of the prayer of the petition.

Poor's Roll, for Admission to.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For admission to the Poor's Roll in respect of his inability to pay for the conduct of an action [*state nature of case, as e.g.* of aliment] in this Court against the defender [*or* to defend an action [*state nature of case, as e.g.* of aliment] in this Court against the pursuer at the instance of the defender] conform to certificate produced.

Therefore the pursuer craves the Court—

To remit this application to the agents for the poor to report, and on considering said report to admit pursuer to the benefit of the Poor's Roll and appoint an agent to take charge of and prosecute pursuer's case [*or* defence].

CONDESCENDENCE.

The pursuer has a claim against the defender for [*state the nature of the case* (*Duncan*, 1846, 8 *D.* 411; *Grant*, 1884, 21 *S. L. R.* 549)], and desires to raise an action for the enforcement thereof in the said Court [*or*, The defender has raised an action of [*state the nature of the action*] in the said Court against the pursuer, who desires to defend the same], but, as certified by the certificate herewith produced, he is unable to do so on account of poverty.

PLEA IN LAW.

The pursuer being unable from poverty to pay or provide for the expenses of suing [*or* defending] said action ought to be admitted to sue *in formâ pauperis*.

Possess and Occupy, to.—*See* IMPLEMENT, Nos. 3, 4, 5; LEASES.

Possessory Actions.

These are writs by pursuers who, at the time of raising the action, have an ex facie *right to the possession of the subjects. By the action they obtain merely possession, not an absolute title to the subjects in dispute.*

The most common forms of possessory writs are for Removing and Maills and Duties, and forms for these will be found under these heads.

Preference, to set aside.—*See* Bankruptcy, No. 34.

Presumption of Life Limitation Act, 1891.

Note.—*Actions under this Act, where the whole value of the estate in Scotland does not exceed* £500, *may be raised in the Sheriff Court of the county in which the greater part of the estate is situated.*

In order to succeed to intestate moveable succession by the operation of the Act, the absentee must have been domiciled in Scotland at his (presumed) death (sec. 3). This is, of course, incapable of proof, but is held to mean that the absentee's last known domicile must have been in Scotland.

1. To Fix Date of Death.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. B. and M. T. [*designations*], trustees acting under the ante-nuptial marriage contract between the deceased C. B. [*designation*] and the also deceased D. E. or B., his wife, dated 18 , and recorded in the Books of Council and Session 18 , *Defenders.*

The demand of the pursuer is—

For a finding, in terms of the Presumption of Life Limitation (Scotland) Act, 1891, that F. B. [*designation*] has disappeared, and must be presumed to have died on , and for warrant to pursuer to make up titles to his estate.

Therefore the pursuer craves the Court—

To find that F. B. [*designation*] has disappeared, that he has not been known to be alive after 19 , and that he died, or must be presumed to have died, on 19 ; and to grant warrant to the pursuer to make up titles to, enter into possession of, sell, and burden the estate in Scotland of the said

F. B., as if the said F. B. had actually died on the said date; and to find any of the defenders offering opposition hereto liable in expenses.

CONDESCENDENCE.

1. The pursuer and the said F. B. were the only children of the deceased C. B. [*designation*] and the also deceased D. E. or B., his wife. The pursuer is thus both heir-at-law and heir *in mobilibus* of the said F. B. The respondents are the marriage-contract trustees acting under the contract of marriage entered into between the said C. B. and the said D. E. or B., dated 18 .

2. The said C. B. died on or about 18 , and the said D. E. or B. on or about 19 . The estate and funds held by the defenders are now divisible among the parties entitled thereto.

3. On or about 18 , the said F. B. left this country for Australia. After his arrival there he proceeded to . For some years after he went abroad he corresponded regularly with his family, but after 18 all correspondence ceased. The last letter received from the said F. B. was dated 18 , and bears to have been written from .

4. Repeated endeavours have been made, through solicitors and others in Australia, to trace the said F. B. The last that has been heard of him was that in 18 he was employed as a stockman at . At that time he was unmarried. Advertisements have also been inserted in the Australian papers from time to time during the last five years, but no reply has ever been received. The said F. B. was, when last heard of, domiciled in Scotland.

5. Under and in terms of the said marriage contract, the said F. B. is entitled to [*state his interest under the marriage contract*]. As the said C. B. died intestate, he is also entitled to [*state his interest in his father's estate*].

PLEA IN LAW.

The said F. B. having disappeared and not having been heard of for seven years, decree should be pronounced in terms of the prayer of the petition.

2. For Warrant to Sell Subjects where One of the "Pro indiviso" Proprietors has Disappeared.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For a finding, in terms of the Presumption of Life Limitation (Scotland) Act, 1891, that E. D. [*designation of absentee*] has disappeared, has not been heard of since , and that he died, or must be presumed to have died, on said date, and for authority to the pursuer to sell the house, No. X. Street, Y., of which he, along with the said E. D., was joint *pro indiviso* proprietor.

Therefore the pursuer craves the Court—

To find that the said E. D. has disappeared, has not been known to be alive after , and that he died, or must be presumed to have died, on said date, and, after such inquiry as the Court may think expedient, to grant warrant to the pursuer to sell the said house by public roup or private bargain, as the Court shall think fit: To find and declare that the title to be granted by the pursuer to the purchaser of the said house shall be as good and valid to him as if the said E. D. had been a party to such sale and conveyance: To appoint the share belonging to the said E. F. of the price obtained for said house, less the proportion applicable thereto of the expenses of sale and conveyance [and under deduction of the expense of this application], to be paid into bank for his behoof; and to find any party appearing and offering opposition hereto liable in expenses.

Condescendence.

1. The pursuer is proprietor of one-half *pro indiviso* of the house, No. X. Street, Y. The other *pro indiviso* half of the said property belongs to E. D., sometime residing at .

2. The said E. D. left this country in or about the year 18 , and has not since been heard of. The defender C. D. is the son and heir-at-law of the said E. D., being the only child of his marriage with the deceased P. S. or D., who died in 18 .

3. By sec. 4 of the Presumption of Life Limitation Act, 1891, it is provided [*quote*].

4. The pursuer is now desirous of realising his *pro indiviso* share of the said property, and he accordingly makes the present application for warrant to sell the said house.

Plea in Law.

The said E. D. having been absent from Scotland, and not having been heard of for seven years, decree should be granted as craved.

3. Petition for Reconveyance of Lands Unsold.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For a decree, in terms of sec. 6 of the Presumption of Life Limitation (Scotland) Act, 1891, ordaining the defender to reconvey to the pursuer the house, No. X. Street, Y., to which house defender, on the presumption of pursuer's death, completed a title as pursuer's heir-at-law.

Therefore the pursuer craves the Court—

To ordain the defender to convey to the pursuer the house, No. X. Street, Y., free of any burden which did not affect the said subjects at 19 , upon payment to him by the pursuer of the sum of £ sterling, or such other sum as he shall show to be the value of the ameliorations made by him upon the said subjects; and to grant, at the expense of the pursuer, such deeds and instruments, other than those granted in discharge of any burden as aforesaid, as may be necessary for the completion of the pursuer's title to the said subjects, but with warrandice from fact and deed only; as also to ordain the defender to free and relieve the pursuer of all claims and demands in name of relief, composition, or other casualty which may be competent to the superior of the said subjects in respect of or consequent upon the completion of the pursuer's title thereto; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is eldest son and heir-at-law of the now deceased E. B. [*designation*]. The defender is the immediate younger brother of the pursuer.

2. In or about the year 18 , the pursuer left this country for Australia, where he resided until recently. On his return to this country he found that the said E. B. had died on or about 19 , intestate, leaving, *inter alia*, heritable estate consisting of the said house, No. X. Street, Y.

3. During the pursuer's absence the defender took possession of the said house, and on the supposition of the pursuer's death, completed a title thereto as heir-at-law. In order to do so, he, on or about

19 , presented a petition to the Court, under the Presumption of Life Limitation Act, 1891, on which the Court, on or about 19 , pronounced a judgment in the following terms [*quote judgment*].

4. By sec. of the said statute it is provided [*quote*].

5. On his return to this country, the pursuer called upon the defender to reconvey the said subjects to him, but the defender refuses or delays to do so, and the present action has thus been rendered necessary.

PLEA IN LAW.

The pursuer being the lawful owner of the said subjects, and having now returned to this country, decree should be pronounced as craved, with expenses.

4. Where Estate has been Sold.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. B. [*designation*], *Defender*.

The demand of the pursuer is—

For payment by the defender of £ , the price received by him for the sale of the estate of X. to M. N. [*designation*], said estate having belonged to pursuer, and having been sold by defender to the said M. N. under the authority of a decree of this Court, dated , obtained by defender as pursuer's heir-at-law, under the provisions of the Presumption of Life Limitation (Scotland) Act, 1891, in consequence of pursuer's prolonged absence from the country.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from [*date of demand*] and expenses.

CONDESCENDENCE.

1. The pursuer is the eldest son and heir-at-law of the now deceased D. B. At the time of his death, which occurred on or about 19 , the said D. B. was heritable proprietor of the estate of X. The defender is the immediate younger brother of the pursuer.

2. In or about the year 18 , the pursuer left this country and went to Australia. He only returned home in the month of May of the present year.

3. On his return to this country the pursuer discovered that during his absence the said D. B. had died as aforesaid. Immediately after the death of the said D. B. the defender presented a petition to the Court praying [*set out briefly petition of prayer*]. Judgment in terms of the said prayer was pronounced on 19 . Thereafter the defender entered into possession of the said estate of X., and made up a title thereto. On or about 19 the defender sold the said estate to M. N. [*designation*], who is now in possession thereof. The price received by him therefor was £ , being the principal sum sued for.

4. By sec. of the Presumption of Life Limitation Act, 1891, it is provided [*quote section*].

5. The pursuer has called upon the defender to make payment of the price received by him for the said estate, but the defender refuses or delays to do so, and the present action has thus been rendered necessary.

PLEAS IN LAW.

1. The pursuer having been the lawful owner of the said subjects, and having now returned to this country, is entitled to obtain the said subjects or the price thereof.

2. The defender having sold the said subjects, is bound to make payment to the pursuer of the price received therefor.

Principals, By Agent against, for Accounting.—*See* ACCOUNTING, No. 7.

Prisoner.

1. For Authority to Remove to Hospital.

Sheriffdom of at .

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For a warrant authorising the removal of C. D., presently a prisoner in the prison of X., from said prison to a hospital, conform to medical certificates herewith produced.

Therefore the pursuer craves the Court—

To grant warrant to the petitioner to remove the said C. D., under such precautions as to the Court may seem necessary and proper, to a hospital or other fit place, and on his recovery to reconvey him to said prison, there to be detained for the period, if any,

then remaining unexpired of the sentence under which he is presently confined.

CONDESCENDENCE.

1. The said C. D. is presently a prisoner in the prison of X., under a sentence ordering him to be confined for the period of . There are still to run of the said sentence.

2. The said C. D. is at present suffering from , as appears from the medical certificates herewith produced. Said prison is unsuitable for the treatment of said disease, and it is therefore necessary that the said C. D. should be removed to a hospital.

PLEA IN LAW.

The said prisoner being afflicted with a disease which threatens immediate danger to his life, and it being impossible to treat him properly in the prison, warrant should be granted in terms of the prayer of the petition.

2. For Removal to Asylum.

Sheriffdom of at .

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For a warrant authorising the removal of C. D., presently a prisoner in the prison of X., from said prison to an asylum, conform to medical certificates herewith produced.

Therefore the pursuer craves the Court—

To grant warrant to the petitioner to remove the said C. D. to the Y. Asylum, or to such other asylum as the Court may appoint, there to be detained and maintained for the period during which he would have been liable to detention in the prison of X. had he not been so removed.

CONDESCENDENCE.

1. On the said C. D. was sentenced to be detained in the prison of X. for . There are still remaining unexpired of the said sentence.

2. The said C. D. is presently insane, as appears from the medical certificates herewith produced. In these circumstances it is necessary that the said C. D. should be removed to an asylum, and there detained for the unexpired portion of said sentence.

PLEA IN LAW.

The said prisoner being insane, warrant should be granted in terms of the prayer of the petition.

3. For Removal to give Evidence.

Sheriffdom of at .

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For a warrant authorising the attendance of C. D. [*designation*], presently a prisoner in the prison of X., at a diet of proof to be held within the Sheriff Court House at on , to give evidence on behalf of the pursuer in an action at his instance against E. F. [*designation*].

Therefore the pursuer craves the Court—

To grant warrant to the governor of said prison to deliver the said C. D. to officers of Court, and to said officers to convey him to the said Court House, for the purpose of enabling him to attend said diet and give evidence, and thereafter to reconvey and redeliver him at said prison.

CONDESCENDENCE.

1. The pursuer recently raised an action of in the Sheriff Court of against the said E. F., the diet of proof in which has by interlocutor of , herewith produced, been fixed for the 19 , before Mr. Sheriff .

2. The said C. D., who is presently detained in the prison of X., is required to give evidence on pursuer's behalf at the said trial [*narrate circumstances which make his evidence necessary*], and a warrant for his attendance is necessary.

PLEA IN LAW.

The said prisoner being a necessary witness for the pursuer in said cause, warrant for attendance at the diet of proof thereof should be granted as craved.

Procurator-Fiscal, Concurrence of.—*See* INTERDICT, BREACH OF.

Promise of Marriage, Breach of.—*See* MARRIAGE.

Promissory Note.—*See* BILL OF EXCHANGE.

Property.—*See* ACCESS.

Property, Declarator of.—*See* DECLARATOR, No. 1.

Prorogation.—*See* MOTION.

Proving of the Tenor.—*See* DECLARATOR, Nos. 19 and 20.

Provost, for Appointment of.—*See* ELECTIONS, No. 8.

Public Health Act, 1897.—*See also* NUISANCE.

1. For Warrant to Admit to Premises (under s. 18).

(*Where application is addressed to a Sheriff.*)

Sheriffdom of at .

A. B., sanitary inspector appointed by the district committee of the county council of the county of , local authority of the said district under the Public Health (Scotland) Act, 1897, *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For authority, in terms of sec. 18 of the Public Health (Scotland) Act, 1897, to the pursuer to inspect the defender's premises in order to ascertain whether a nuisance exists therein.

Therefore the pursuer craves the Court—

To take the oath of the pursuer to his belief on reasonable grounds that a nuisance, consisting of [*state nuisance, in terms of sec.* 16], exists on the premises at , occupied by the defender [*or*, of which the defender is the person in charge]: To ordain the defender to admit the pursuer and at any hour between [nine A.M. and six P.M.], [*add, if the case requires it,* or at any hour when the operations suspected to cause the said nuisance are believed to be in progress, or are usually carried on] in order to inspect said premises, and, if necessary, to cause

such work to be done therein as may be necessary for an effectual examination thereof; and, in the event of the defender failing or refusing to obey such order, to grant warrant to the pursuer and said to take such steps as may be necessary to obtain immediate forcible entry into said premises; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is sanitary inspector under the district committee of the county council of the county of , who are the local authority of said district under the Public Health (Scotland) Act, 1897. The defender is the owner and occupier [*or*, is the person having the custody. *If another person is the owner, design him*] of the premises, which are within said district [*describe them*].

2. The pursuer believes on reasonable grounds that there exists in said premises the nuisance described in the crave hereof.

3. On 19 the pursuer applied for admission for himself and said to inspect the said premises. Admission was refused. In consequence of such refusal this application has been rendered necessary.

4. Reference is made to secs. 16 and 18 of the said Public Health (Scotland) Act, 1897.

PLEA IN LAW.

The pursuer having reasonable grounds for believing that a nuisance exists within the premises occupied by [*or* in the custody of] the defender, and having been refused admission to inspect the said premises, is entitled under sec. 18 of the Public Health (Scotland) Act, 1897, to decree and warrant as craved.

2. Deposition of the Pursuer.

At , the day of , in presence of , compeared the said A. B., petitioner, who, being solemnly sworn, depones that the whole statements in the foregoing petition are true.

[*Signatures of deponent and judge.*]

3. Summary Complaint to Recover Penalty for Contraventions of or Offences against Public Health (Scotland) Act, 1897.

This form is applicable to the sections of the Act which enact that acts or defaults therein referred to shall be offences against the Act, or

that anyone committing them shall be liable to a fine, or a penalty, or to imprisonment.

(*Under the Public Health (Scotland) Act*, 1897, *and the Summary Jurisdiction (Scotland) Act*, 1908.)

Sheriffdom of at .

The suburban district committee of the county council of , local authority of said district under the Public Health (Scotland) Act, 1897 [*or*, name of person authorised to prosecute], *Pursuer*,

against

A. B. [*designation*], *Defender*.

The demand of the pursuer is—

For a finding that the defender has contravened [*or* has been guilty of an offence within the meaning of] sections of the Public Health (Scotland) Act, 1897, in so far as [*state contravention*] whereby the defender is liable [*state shortly the penalty and alternatives*, e.g. to a penalty not exceeding £5, with the expenses of this prosecution, and in default of payment, within the time to be specified by the Court, to imprisonment, in terms of the 47th section of the Summary Jurisdiction (Scotland) Act, 1908, the imprisonment to cease on payment of the amount of penalty and costs].

Therefore the pursuer crave the Court—

To grant warrant for the citation of defender to appear to answer to this complaint, and thereafter to find him guilty of the aforesaid contravention [*or* offence], and adjudge him to suffer the penalties provided by the said Acts.

4. Summary Application to Recover a Penalty for Refusal to Obey Order to Admit to Premises.

(*Under the Public Health (Scotland) Act*, 1897, *s.* 18, *and the Summary Jurisdiction (Scotland) Act*, 1908.)

Sheriffdom of at .

A. B., sanitary inspector appointed by the district committee of the county council of the county of , local authority of said district, *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For a finding that defender has been guilty of an offence within the meaning of the Public Health (Scotland) Act, 1897, sec. 18, in so

far as on or about 19 , at [*place*] within the district of said local authority, he being occupier of the premises at , and having been required, by order of your Lordship duly served upon him, to admit to said premises in order to inspect the same, did on 19 refuse to admit the said to said premises, whereby the said C. D. is liable in a penalty not exceeding five pounds sterling, with expenses of this prosecution, and, failing payment of said penalty within a time to be specified by the Court, to imprisonment in terms of the 47th section of the Summary Jurisdiction (Scotland) Act, 1908, the imprisonment to cease upon payment of the amount of penalty and expenses.

Therefore the pursuer craves the Court—

To grant warrant for the citation of defender to appear to answer to this complaint, and thereafter to find him guilty of the said contravention [*or* offence], and adjudge him to suffer the penalties provided by the said Acts.

5. For Decree for Removal of Nuisance (s. 22).

[*All applications under heads* (6), (8), (9), (10), *and* (11) *of sec.* 16 must *be made to the Sheriff.*]

Sheriffdom of at .

A. B., sanitary inspector appointed by the district committee of the county council of the county of , local authority of said district under the Public Health (Scotland) Act, 1897, *Pursuer*,

against

C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For a finding, in terms of the Public Health (Scotland) Act, 1897, that there exists a nuisance upon defender's said premises, and for a decree ordaining defender to remove said nuisance.

Therefore the pursuer craves the Court—

To find that there exists upon the said premises of which the defender is owner and occupier [*describe nuisance*], and that the said is a nuisance within the meaning of the Public Health (Scotland) Act, 1897, and that the defender is the author of the said nuisance; and to ordain the defender forthwith to remove the said nuisance, and for that purpose to execute [*works*

to be done], or such other works as may, in the judgment of the Court, be required for removal of said nuisance complained of [*or* to cease from [*state the act which is believed to cause the nuisance*]]. [*If interdict against future nuisance is desired, add* —and, on the removal of said nuisance, to interdict the defender from again [*state the act or default by which the nuisance is caused*]]; and to do further or otherwise as the case may in the judgment of the Court require; and to find the defender liable in expenses.

Condescendence.

1. The pursuer is sanitary inspector appointed by the district committee of , who are the local authority of said district under the Public Health (Scotland) Act, 1897. He is duly authorised by said local authority to take these proceedings on their behalf. The defender is owner and occupier [*or, as the case may be*] of premises known as , and situated at , in said district.

2. At the said premises there exists a nuisance in the sense of the Public Health (Scotland) Act, 1897, consisting in . The defender is the author of said nuisance. Intimation of the existence of said nuisance was given to the defender by the pursuer on 19 . A copy of said intimation is herewith produced.

3. The said local authority, having been satisfied of the existence of the said nuisance, served upon the defender on 19 a notice requiring him to remove the same within [*time*], by delivering the same to him [*state mode of service*]. A copy of said notice, with certificate of said service, is produced.

4. The defender has failed or refused to comply with the requisition contained in said notice, and the said nuisance still exists at the said premises. This application to have the same removed or discontinued [and for interdict against its continuance] is therefore rendered necessary.

5. This application is made under the Public Health (Scotland) Act, 1897, and particularly secs. 16, 19, 20, 21, 22, 23, 25, and 26 thereof.

Plea in Law.

The defender being bound to remove the nuisance complained of, and having failed, after due notice from the local authority, to remove said nuisance, the pursuer is entitled to decree, with expenses, for its removal or discontinuance, and to interdict.

6. Application for Power to Enter Lands or Premises in Connection with the Making or Repairing of Sewers or Drains (s. 109).

Sheriffdom of at .

The district committee of the district of the county council of the county of , local authority of said district under the Public Health (Scotland) Act, 1897, *Pursuer*,

against

A. B. [*designation*], owner of , and C. D. [*designation*], occupier of , *Defenders.*

The demand of the pursuer is—

For warrant in terms of sec. 109 of the Public Health (Scotland) Act, 1897, to enter upon the lands of X., and to lay open and survey same in order to ascertain the course of the sewers or drains.

Therefore the pursuer craves the Court—

To grant warrant to the pursuer and the officer or officers and others authorised by the pursuer to enter the lands of at , belonging to the defender A. B., and occupied by the defender C. D., and, if necessary, to lay open the said lands, and to survey the same and ascertain the course of the sewers or drains, all during the day-time and at reasonable times; and in the event of opposition hereto, to find the party opposing liable in expenses.

CONDESCENDENCE.

1. The pursuer is the local authority of . The defender A. B. is the owner, and the defender C. D. is the occupier, of the lands of within the pursuer's district.

2. In the course of certain works which the pursuer is performing for the purpose of effectually draining a portion of said district, it has become necessary to enter the said lands and to survey the same, and ascertain the course of the sewers or drains therein. It is believed that it will be necessary to alter and enlarge the said sewers and drains therein. The work will be done at the expense of the pursuer, and the pursuer will repair all damage done.

3. The pursuer requested the defenders to give access to the pursuer's officers and servants to the said lands, but leave was refused or withheld, and the defenders have also refused leave to the pursuer to perform the said necessary operations. Written notice to the

defenders that the present application would be made was given on the day of . A copy of the said written notice is produced herewith. Reference is made to the Public Health (Scotland) Act, 1878, and particularly to sec. 109 thereof.

PLEA IN LAW.

Power to enter said lands and perform the work mentioned in the petition being necessary, and the defenders having refused access and leave for said purposes, warrant to the pursuer ought to be granted as craved.

7. Application to the Sheriff to Fix Terms on which Owner or Occupier beyond District may Connect Drain with Sewer of Local Authority (s. 111).

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

The district committee of the district of the county council of the county of , local authority of said district under the Public Health (Scotland) Act, 1897, *Defender*.

The demand of the pursuer is—

For warrant to the pursuer in terms of sec. 111 of the Public Health (Scotland) Act, 1897, to connect the drain from his said premises with the sewer of the defender at .

Therefore the pursuer craves the Court—

To find that the pursuer is entitled to cause the drain from his premises at [*place*] to communicate with the sewer of the defender at [*place*], on the following terms and conditions, viz. [*state these*], or on such other terms and conditions as to the Court may seem fit, and in the event of opposition hereto to find the defender liable in expenses.

CONDESCENDENCE.

1. The defender is the local authority of the district of , and the pursuer is owner of certain houses at , outside the district of the defender. The pursuer is not liable for public health general assessment, or special sewer assessment in said district.

2. A sewer belonging to the defender passes within yards or thereby of the pursuer's said houses and in the natural line of drainage thereof. It is of sufficient capacity, and is well suited for

containing and carrying off said drainage. Said sewage is not of a nature which would cause damage to said sewer of the defender or by admixture with other sewage would cause a nuisance. The pursuer is entitled, under the Public Health (Scotland) Act, 1897, and particularly sec. 111 thereof, to cause the drain from the said houses to communicate with the defender's said sewer.

3. The pursuer has offered to the defender to cause the said drain to communicate with said sewer on the following terms and conditions, viz. [*state these*]. Said terms and conditions are reasonable, but the defender refuses to agree thereto, and the present application is thus rendered necessary.

PLEA IN LAW.

The pursuer being entitled in terms of sec. 111 of the Public Health (Scotland) Act, 1897, to cause his said drain to communicate with the defender's sewer on reasonable terms, and having offered such terms, decree ought to be given as craved.

Pupil, for Custody of.—*See* GUARDIANSHIP.

Pupil's Protection Act.—*See* FACTORS (JUDICIAL).

Purge Record, Obligation to.—*See* IMPLEMENT, No. 2.

Quoad Sacra Church.—*See* CHURCH.

Railway Accident, Damages for Injury by.—*See* REPARATION, No. 12 (2).

Railways Clauses Act, 1845.

The majority of forms relating to railways will be found under the following heads:—ACCOMMODATION WORKS; APPEAL FROM RAILWAY AND LAND COMMISSIONERS; INTERDICT; LANDS CLAUSES ACTS.

1. Against Railway Company for Damages for Interrupting Road.

This application is under secs. 46 *and* 48 *of the Railways Clauses Act,* 1845. *For the circumstances in which the penalty of* £20 *per day for*

failing to provide a service road can be recovered, see Pollock, 37 *S. L. R.* 881.

Sheriffdom of at .

A. B. & Co. [*designation*], *Pursuers,*

against

The X. Y. Railway Company, incorporated by Act of Parliament, and having an office at , *Defenders.*

The claim of the pursuers is—

For payment by the defenders of £ , in terms of secs. 46 and 48 of the Railway Clauses Consolidation (Scotland) Act, 1845, as damages, in respect that defenders, having obtained power under the X. Y. Railway Act, 19 , to divert the T. Mill Road leading from the main X. Z. Road to the pursuers' mill, known as the T. Mill, and being bound, before commencing operations for the diversion of said road, to provide a sufficient service road, have failed to do so, and are therefore liable in damages to pursuers.

Therefore the pursuers crave the Court—

To ordain the defenders to appear before the Court at such diet as it shall appoint: To grant diligence against witnesses and havers; and after hearing proof, to grant a decree against the defenders for payment to the pursuers of £ sterling, with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The pursuers are manufacturers at T. Mill, Z. The defenders, the said X. Y. Railway Company, were incorporated by the X. Y. Railway Act, 19 , for the purpose of constructing a railway from X. to Y.

2. By their said Act, which incorporates the Railways Clauses Act, 1845, the defenders *inter alia* obtained power to divert the road known as the T. Mill Road, which leads from the main X. Z. Road to the T. Mill, belonging to the pursuers.

3. In terms of the said Railways Clauses Act (sec. 46), the defenders, before commencing operations for the diversion of the said road, were bound to provide a sufficient service road in lieu thereof. And in terms of sec. 48 of the said Act, the pursuers are entitled to recover any special damage caused them by the failure to provide such a service road.

4. In breach of their statutory obligation, the defenders, on or about 19 , without making any provision for the traffic from the pursuers' mill, proceeded to break up the said road at a point

yards south of the entrance to the pursuers' said mill, for the purpose of constructing their railway. They [*narrate operations on road*].

5. The pursuers suffered great loss and inconvenience through the said unwarrantable actings of the defenders, being unable to get goods delivered to their mill, or have goods removed therefrom, in the usual way by lorries. During the said operations the pursuers had to carry all goods sent away by them from the entrance to the mill to a point beyond the defenders' said cutting, there being no road for carts or lorries to approach the mill, and in like manner all goods for the mill had to be carried from the same point.

6. The pursuers have called on the defenders to compensate them for the loss thus sustained, but they decline to do so, and this action is thus necessary.

PLEA IN LAW.

The defenders having, in breach of their statutory obligation, failed to provide a sufficient service road for the pursuers' use as condescended on, are bound to make good to the pursuers the special damage thereby occasioned to them.

2. For Permission to Cross Highway on Level.

This is under the provisions of secs. 39 *and* 53 *of the Railways Clauses Act,* 1845. *By the latter section, fourteen days' previous notice of the application must be given by advertisement in a local newspaper and on the door of the parish church.*

Sheriffdom of at .

The X. Y. Railway Company, incorporated by Act of Parliament, *Pursuers.*

The demand of the pursuers is—

For consent, in terms of secs. 39 and 53 of the Railway Clauses Consolidation (Scotland) Act, 1845, to carry the line of pursuers' railway by a level crossing across the road leading from the public road from X. to Z. to the farm of M. Mains at a point yards from the said public road, as shown on the plan herewith produced, statutory notice of pursuers' intention having been duly given.

Therefore the pursuers crave the Court—

To consent, in terms of said Act, to the railway from X. to Y., presently in course of construction by the pursuers, being

carried on the level across the road from the public road from X. to Z. to the farm of M. Mains at the said point.

CONDESCENDENCE.

1. By the X. Y. Railway Act, 19 , the pursuers are authorised to construct a railway from X. to Y. The line of the said railway crosses the road from the public road from X. to Z. to the farm of M. Mains at a point yards from the said public road, as shown on the plan herewith produced.

2. By sec. 39 of the Railways Clauses Act, 1845 (which Act is incorporated in the X. Y. Railway Act, 19), it is provided that, "with the consent of the Sheriff or two or more justices, as after mentioned, it shall be lawful for the Company to carry the railway across any highway other than a public carriage-road on the level." The road mentioned in the prayer of the petition is not a public carriage-road within the meaning of the Railways Clauses Act.

3. By sec. 53 of the said Act it is provided [*quote section*].

4. In terms of the said 53rd section, the petitioners advertised this application in the issue of the *X. Advertiser* of 19 , conform to copy of the said newspaper herewith produced, and also caused a notice in the same terms to be affixed to the door of the parish church of M. on 19 .

5. There is little traffic along the said road, the principal entrance to M. Mains being from the X. M. Road, and the only traffic besides that to M. Mains being a few pleasure-seekers going to the M. Hill. In these circumstances a level crossing will cause no inconvenience or danger to the public.

PLEA IN LAW.

As the pursuers' railway can be carried across the said highway on the level with a due regard to the public safety and convenience, consent should be granted as craved.

Recall, For.—*See* ALIMENT, No. 7; ARRESTMENT, Nos. 3-6; EXECUTOR, No. 15; FACTORS (JUDICIAL), No. 5.

Reclaiming Note.

In appeals from the Sheriff-Substitute to the Sheriff, the Sheriff may either hear the arguments of parties orally or by written reclaiming note and answers.

Unto the Honourable the Sheriff of ,

The Reclaiming Note

for

A. B. [*designation*],

in the action at his instance against C. D. [*designation*];

Humbly sheweth,—

That in the said action, which is presently depending in the Sheriff Court of , Mr. Sheriff-Substitute on 19 pronounced the interlocutor submitted to review.

The pursuer considers himself aggrieved by the said interlocutor, and being advised that it is erroneous, he respectfully submits that for the following reasons it ought to be recalled, and decree pronounced in terms of the prayer of the petition.

The action is for [*state nature of action, giving very briefly such details of the action and procedure as are absolutely necessary. Then state the arguments and authorities against the interlocutor objected to.*]

In these circumstances the pursuer respectfully submits that the Sheriff-Substitute has arrived at an erroneous conclusion, and that the pursuer was entitled to the decree craved in his petition.

May it therefore please your Lordship to recall the said interlocutor, to repel the defender's pleas, and to decern against him in terms of the prayer of the petition; or to do otherwise in the premises as to your Lordship shall seem proper.

Redemption of Casualty.—*See* CASUALTY.

Redemption, Forfeiture of Right of.—*See* HERITABLE SECURITY ACT.

Referee.—*See* ARBITRATION.

Reference.—*See* MINUTE.

Registration of Births.

1. To Register Neglected Entry.

This is done by an entry in the Register of Neglected Entries, which embraces the period from 1801 *to* 1854, *the end of the old parochial*

registers. The application is under the second section of the Registration of Births, Deaths, and Marriages Act, 1860.

Sheriffdom of at .

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For warrant, in terms of sec. 2 of the Registration of Births, Deaths, and Marriages Act, 1860, to make an entry in the Register of Neglected Entries of the death of C. B., pursuer's elder brother, as condescended on.

Therefore the pursuer craves the Court—

To grant warrant to the Registrar-General of Births, Deaths, and Marriages in Scotland, to make an entry in the Register of Neglected Entries that C. B., the petitioner's elder brother, died of consumption on 18 .

CONDESCENDENCE.

1. The petitioner is the son of D. B. [*designation*] and M. W. or B., his wife, and was born at X., in the parish of Y. and county of Z., on 18 . The said C. B. was the elder brother of the petitioner and the only other child of the said D. B., and was born at X. aforesaid, on or about 18 .

2. The said C. B. died on 18 , between the hours of and o'clock, P.M., as the petitioner believes, from consumption. The petitioner, who was then years of age, was present at the death, as were also [*state any other persons, and say if alive or dead*]. The said C. B. was not attended by any medical practitioner during his last illness.

3. The said C. B.'s death was not registered, his parents not being aware, as the petitioner believes, of the necessity for so doing.

4. The petitioner now desires to have the death of the said C. B. entered in the Register of Neglected Entries in terms of sec. 2 of the Registration of Births, Deaths, and Marriages Act, 1860.

PLEA IN LAW.

The death of the said C. B. not having been registered, the petitioner is entitled to have an entry thereof made in the Register of Neglected Entries, in terms of the statute thereanent.

2. To Correct Entry in New Registers.

There is not likely to occur an omitted entry in the new registers, i.e. *subsequent to* 1*st January* 1855; *but errors in the entries especially near*

the commencement of the registers do occur. Such errors may be corrected under the provisions of sec. 63 *of the Registration of Births, Deaths, and Marriages Act,* 1854.

Sheriffdom of at .

A. B. [*designation*], *Pursuer.*

The demand of the pursuer is—

For warrant, in terms of sec. 63 of the Registration of Births, Deaths, and Marriages Act, 1854, to make an entry in the Register of Corrected Entries for the parish of Y., in the county of Z., relative to the death of Donald B. [*designation*] as condescended on, and to make the corresponding reference on the margin of said entry.

Therefore the pursuer craves the Court—

To grant warrant to the registrar of the parish of Y., in the county of Z., to make an entry in the Register of Corrected Entries for the said parish relative to the death of the deceased Donald B. [*designation*] by substituting the Christian name "Daniel" for "Donald," as also to insert a reference on the margin of the entry of said death in the register of the said district for the year 19 .

CONDESCENDENCE.

1. The said Donald B. was the petitioner's father, and died at No. R. Street, Y., on 19 .

2. The petitioner registered the death on 19 , with the registrar of the parish of Y. In the schedule of information for registration he stated that his father's Christian name was Daniel, that being the name by which he had always heard him called.

3. Since then the petitioner has been informed that his father's Christian name was Donald, and he has procured an extract of his birth which states his name to be Donald. In these circumstances the petitioner desires to have the entry of his father's death in the Register of Deaths of the parish of Y. corrected, as provided for in sec. 63 of the Registration of Births, Deaths, and Marriages Act, 1854.

PLEA IN LAW.

The entry of the said Donald B.'s death in the said register being erroneous as condescended on, the petitioner is entitled to have it corrected, in terms of the statute thereanent.

3. To Register Legitimation.

(*See* LEGITIMATION.)

4. To Register Irregular Marriage.

(*See* MARRIAGE.)

5. To Appoint Interim Registrar.

Under sec. 12 *of the Registration of Births, Deaths, and Marriages Act,* 1854, *the Sheriff may, on the application of the parish or town council, appoint an interim registrar to act until the vacancy can be filled up. By sec.* 9 *of the same Act, where, as is common in many small or remote parishes, the schoolmaster is almost the only suitable person for registrar, the Sheriff may postpone the election until a new schoolmaster has been elected, provided that be within four months of the occurrence of the vacancy.*

Sheriffdom of at .

The Parish Council of the Parish of X., *Pursuers.*

The demand of the pursuers is—

For the appointment, in terms of sec. 12 of the Registration of Births, Deaths, and Marriages Act, 1854, of an interim registrar for the parish of X., as condescended on.

Therefore the pursuers crave the Court—

To appoint R. S. [*designation*], or such other person as to the Court shall seem proper, to be interim registrar for the parish of X. [and to postpone the election of a registrar for the said parish for [*not exceeding four*] months from [*date of last registrar's demitting office*]].

CONDESCENDENCE.

1. A. B., schoolmaster, X., died there on 19 . At the time of his death he held the office of Registrar of Births, Deaths, and Marriages for the parish of X., and the said appointment is therefore now vacant.

[2. It has been usual in the said parish for the appointment of registrar to be held by the schoolmaster for the time, and the petitioners believe that the said practice will be continued. It is, however, unlikely that the post of schoolmaster can be filled up before the expiry of at least months; and accordingly the petitioners desire the consent of the Court to the postponement of the election of a registrar for months from the said 19 , under the powers conferred on the Court by the Registration of Births, Deaths, and Marriages Act, 1854, sec. 9.]

3. Meantime, until a new appointment can be made to the said

vacant office of registrar, the petitioners find it necessary to apply to the Court to appoint an interim registrar under and in terms of sec. 12 of the [aforesaid] Act of Parliament. The petitioners respectfully suggest Mr. R. S. [*designation*] as a suitable person for the said appointment.

PLEAS IN LAW.

1. The office of registrar of the parish of X. being now vacant, an interim registrar should be appointed in terms of the statute.

[2. The deceased registrar having been a schoolmaster, the election of a successor to him may, in terms of the statute, be postponed for a period not exceeding four months until the election of a successor as schoolmaster.]

Registration of Voters.

Special Case.

(*See sec.* 22 *of the Representation of the People Act*, 1868.)

N. B.—*This objection was sustained.*

Special Case

stated by

The Sheriff of [*county*] for the decision of the Court of Appeal under the Representation of the People (Scotland) Act, 1868,

for

A. B. [*designation*], *Appellant*,

against

C. D. [*designation*], *Respondent*.

At a Registration Court for the county [*or* burgh, *or* division of the county] of , held on the day of 19 , C. D. [*designation*] claimed to have his name entered on the roll of voters for the said county [*or as the case may be*].

The following were the facts disclosed at the hearing of the case [*or* were the facts admitted]:—

For several years prior to 19 , the claimant was enrolled as a lodger-voter in respect of his exclusive occupancy of a room in his father's house, Street, X., the value of the said room being sufficient to qualify for a vote.

Since 19 , the claimant has been employed as a clerk in Y., and he occupies lodgings there, but is not and has not claimed to be enrolled as a voter in that burgh.

Every Friday evening the claimant returns to X., and occupies the said room in his father's house until the following Monday morning, when he leaves again for Y. He also occasionally occupies the room for a night in the middle of the week. During his absence it is unoccupied.

An objection to the claim was stated by A. B. [by his agent] on the ground that the claimant could not in the circumstances be held to have resided in his lodgings at Street, X., during the period of twelve months immediately preceding 31st July 19 .

I repelled the objection and sustained the claim, whereupon the objector required from me a special case.

The question of law for the decision of the Court of Appeal is—

Whether the claimant has or has not sufficiently complied with the condition as to residence contained in the Representation of the People (Scotland) Act, 1868, sec. 4 (3).

If my judgment is reversed, the claimant's name must be deleted from the roll.

[*Signature of Sheriff or Substitute who held Registration Court.*]

[*Place and date.*]

Alternative Form.

NOTE.—*This appeal was dismissed.*

[*Heading as before.*]

A. B. [*designation*], *Appellant*,

against

C. D. [*designation*], *Respondent.*

At a Registration Court for the county of X., held at Y. on the day of 19 , an objection was taken by A. B. [*designation*] to the name of C. D. [*designation*] being retained on the roll of voters for the said county as sub-tenant of house, , on the ground that the subjects were not of sufficient value.

The facts were that the voter stood upon the occupancy franchise (more particularly under sec. 5 of the Representation of the People Act, 1884), and that in the Valuation Rolls for the whole qualifying period the clear yearly value of the subjects was entered as £ . It was proposed to lead proof that this was more than the true yearly value. I rejected this evidence, no appeal having been taken in the Valuation Courts, and retained the voter's name on the roll, holding the Valuation Rolls as conclusive, more particularly under sec. 11 of the said statute. Whereupon the objector [by his agent] required from me a special case.

The question of law for the decision of the Court of Appeal is—

Whether, when the clear yearly value appears on the Valuation Rolls to be of the requisite amount for the occupancy qualification, the objector is entitled to go behind the Valuation Rolls [*or* to lead evidence to contradict the yearly value shown in the said rolls].

[*Signature of Agent.*]

[*Place and date.*]

Other Forms of Question.

"Whether the claimant having claimed as a lodger for a bedroom and parlour ought to be admitted in respect of his occupancy of the bedroom alone."

"Whether, upon the facts stated, the claimant was a lodger within the meaning of sec. 4 of the Representation of the People (Scotland) Act, 1868."

"Whether, in the event of a defective claim, as this claim is, being lodged, the Sheriff has power at the Registration Court to authorise an amendment of the same, and to admit the claim as amended."

Relet, for Authority to.—*See* LEASE.

Relief, Actions of.

NOTE.—*Actions of relief present no peculiarities either of form or of procedure.*

The only matter which always requires to be kept in view in actions of relief is that the defender has been duly advised at the time of the claim being made against the party claiming relief, and in the case of action having been taken has also been kept informed of the progress of the action. This should be clearly averred in the condescendence.

1. By Heir against Executor for Relief of Debts Due Personally by Deceased.

Sheriffdom of at .

A. B. [*designation*], heir-at-law of the deceased L. M. [*designation*], *Pursuer*,

against

C. D. [*designation*], executor-nominate of the said deceased L. M., *Defender*.

The demand of the pursuer is—

For a decree ordaining defender to free and relieve the pursuer of

the outstanding personal debts of the said deceased L. M., or for payment by the defender to the pursuer of £200, with interest and expenses.

Therefore the pursuer craves the Court—

To ordain the defender to free and relieve the pursuer of the outstanding personal debts of the said deceased L. M., at least to the extent of the executry estate, by making payment thereof to the several creditors following, viz. [*enumerate the creditors and their claims*], and by producing discharges for said respective debts in the process to follow hereon; and failing the defender so doing within such period as the Court shall appoint, to grant a decree against the defender for payment to the pursuer of two hundred pounds sterling, with interest from the date of citation; and to find the defender liable in expenses.

Condescendence.

1. The pursuer is the eldest son and heir-at-law of the deceased L. M. [*designation*], who died on . The defender is executor-nominate of the said L. M., acting under his settlement, dated , and recorded in the Sheriff Court Books of the , both days of 19 , and duly confirmed [*give details of confirmation*].

2. At the date of his death the said L. M. was indebted to the following persons in the amounts stated, viz. [*give list of creditors and debts*]. The said debts were due personally by the deceased, and fall to be paid out of his executry estate.

3. The pursuer has been called upon by the said creditors to make payment to them of the said debts, and they threaten to take decree and do diligence against him for the amount thereof [*if any actions have been raised or other steps taken, give details*].

4. The pursuer has called upon the defender to free and relieve him of the obligation to pay the said debts, either by paying the debts himself out of the executry estate, or by supplying the pursuer with funds for that purpose, but he refuses to do so, and the present action is accordingly necessary.

Plea in Law.

The pursuer being threatened with diligence in respect of personal debts due by the deceased L. M., and now exigible from his personal estate, is entitled to be relieved thereof by the defender as representative *in mobilibus* of the said L. M.

2. By Cautioner against Principal Debtor for Relief of Payment Due under Bond.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For a decree ordaining the defender to free and relieve the pursuer of his liability as cautioner under the bond for £500 granted by pursuer and defender jointly and severally in favour of E. F. [*designation*], and dated 19 , conform to bond of relief granted by defender, dated , and herewith produced.

Therefore the pursuer craves the Court—

To ordain the defender to free and relieve pursuer of his obligation under said bond by delivering to the pursuer the said bond or an authentic duplicate thereof duly discharged; and failing his doing so, within such time as the Court may appoint, to grant a decree against the defender for payment to the pursuer of five hundred and fifteen pounds sterling, the foresaid sum of principal and interest thereon, with interest from [*date of charge*] until payment; and to find the defender liable in expenses.

CONDESCENDENCE.

1. By bond, dated , granted to E. F. [*designation*], by the pursuer and the defender, they bound and obliged themselves, conjunctly and severally, to make payment to the said E. F. of the sum of £500 sterling.

2. The said bond was recorded in the Sheriff Court Books of at on , and in virtue of a warrant inserted in an extract thereof, the pursuer was, on , charged to pay to the said E. F. the foresaid sum, together with £15, which is the interest due thereon from and since , amounting in all to £515, which is the sum sued for.

3. The pursuer is cautioner for the defender for said principal sum and the interest and penalties to become due thereon under the foresaid bond, conform to bond of relief granted by the defender, dated , and herewith produced. The said charge was duly intimated by the pursuer to the defender on 19 , and he has also called upon the defender to pay said principal sum and interest, but he refuses or delays to do so, and the present action has accordingly been rendered necessary.

PLEA IN LAW.

The defender being bound to relieve the pursuer of the sums libelled, conform to the said bond of relief, decree should be pronounced, with expenses, as craved.

3. By Seller against Purchaser for Relief of Call on Shares Bought.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For a decree ordaining the defender to free and relieve the pursuer of his liability for £500 sterling, being the amount of the third call made on the pursuer on the 1st day of November 19 of £1 per share on 500 shares of the ordinary stock of the X. Railway Company, registered in the company's books, and numbered from 501 to 1000 inclusive, with interest from 19 , when the said sum became payable, or failing his doing so, within such time as the Court may appoint, for payment by the defender to the pursuer of £500, with interest and expenses.

Therefore the pursuer craves the Court—

To ordain the defender to free and relieve the pursuer of his liability for the said £500 by paying to the said X. Railway Company the said sum and the interest due thereon, and producing in the process to follow hereon a discharge thereof; and in the event of the defender failing to pay the said call and interest as aforesaid, and of the pursuer being required to do so, to grant a decree against the defender for payment to the pursuer of £500 sterling, with interest from the said 1st day of November 19 till payment: To ordain the defender to free and relieve the pursuer of all liability for any future calls by procuring himself registered on the books of the said X. Railway Company as the holder of said shares; and to find the defender liable in expenses.

CONDESCENDENCE.

1. On 1st September 19 the pursuer sold to the defender 500 shares of the X. Railway, registered in the company's books, and numbered from 501 to 1000 inclusive.

2. The said shares were formally assigned and transferred by the

pursuer to the defender, who agreed to accept and take such shares, subject to the several orders, restrictions, and conditions on which the pursuer held the same, conform to transfer delivered to the defender, dated 1st September 19 ; but the defender has wrongfully failed to get said transfer registered in the books of the said railway company.

3. On 1st November 19 the pursuer was required to pay the sum of £500, being the amount of a call of £1 per share made on said shares. The said call was intimated by the pursuer to the defender on 2nd November 19 , and the pursuer has since repeatedly called upon the defender to relieve him of said call, but he refuses to do so.

PLEA IN LAW.

The pursuer being entitled to be relieved by the defender of the call condescended on, decree should be pronounced as craved.

4. By Purchaser against Seller for Relief under Warranty.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For a decree ordaining defender to free and relieve pursuer of the loss and damage sustained by him in connection with the supplying and fitting up of two mechanical stokers to the boilers in pursuer's works at , which stokers defender guaranteed, by letter to pursuer dated 19 , to be efficient and reliable, and for which loss defender, under the terms of said letter, is liable to the pursuer.

Therefore the pursuer craves the Court—

To ordain the defender to free and relieve the pursuer of the loss and damage so occasioned, and to grant a decree against defender for payment to the pursuer of £200, with interest from the date of citation; and to find defender liable in expenses.

CONDESCENDENCE.

1. The pursuer carries on business as an ironfounder in Glasgow, and the defender is an engineer there.

2. On the pursuer purchased from the defender two mechanical stokers to be fitted to two of pursuer's boilers in his works at Glasgow. The pursuer undertook to do the bricklaying and rough

work necessary for fitting up the stokers, and the defenders, by letter dated , and herewith produced and referred to, expressly guaranteed that [*quote exact terms of warranty*].

3. The stokers were fitted up, but turned out to be defective and disconform to the said warranty, and instead of raising more steam with less fuel of a cheaper quality, they require more fuel of a higher quality.

4. [*Narrate the intimations made to the defender of the defective state of the said stokers, and also the attempts, if any, of the defender to remedy their defects.*]

5. In consequence of said breach of warranty and defective construction, the pursuer has suffered serious loss and damage, of which the following is a detailed account, viz.:—

(1) Bricklayers and fitters—time working . .	£100	0	0
(2) Extra cost of fuel—200 tons at 10s. per ton .	100	0	0
	£200	0	0

being the sum sued for.

PLEA IN LAW.

The stokers supplied by the defender being disconform to warranty, and the pursuer having suffered loss and damage thereby, he is entitled to decree as craved.

5. By Parish Council to Recover Advances Made by it.

Sheriffdom of at .

The Parish Council of the Parish of F., *Pursuers*,
against
R. W. [*designation*], *Defender*.

The demand of the pursuers is—

For a decree ordaining defender to free and relieve pursuers of the sums paid by them for the maintenance of J. W. [*designation*], the defender's father, from to , conform to statement hereto attached.

Therefore the pursuers crave the Court—

To grant a decree against the defender for payment to the pursuers of the sums so expended by them, amounting in the aggregate to £ , with interest from 19 , till payment: To ordain the defender to free and relieve the pursuers of all further advances which the pursuers may hereafter make on behalf or on account of the said J. W. so long as he may require parochial aid and his parochial settlement continues to be in the

parish of F., with interest on such advances till payment; and to find the defender liable in expenses.

CONDESCENDENCE.

1. On or about 19 , J. W. [*designation*], then residing at , in the parish of F., made application to the pursuers' inspector for parochial relief. The said J. W. was then a proper object of parochial relief.

2. The pursuers have alimented the said J. W. since the said date, and continue to do so. A statement of the sums so advanced by them, amounting to £ , is herewith produced and referred to.

3. The defender R. W. is the only son of the said pauper. He is unmarried, and is well able to support his said parent, and is therefore bound to relieve the pursuers of all advances made and to be made by them on his father's behalf.

4. The pursuers have duly intimated to the defender that his father has become chargeable to their parish, and required him to relieve them of all past and future advances; but he refuses or delays to do so, and the present action has therefore been rendered necessary.

PLEA IN LAW.

The defender being able to support his pauper father, is bound to relieve the pursuers of all sums advanced and to be advanced by them on his father's behalf, as concluded for.

6. By Parish Council to Recover Advances from Either of Two Other Councils.

Sheriffdom of at .

The Parish Council of the Parish of F., *Pursuers*,

against

The Parish Council of the Parish of S. and the Parish Council of the Parish of G., *Defenders*.

The demand of the pursuers is—

For a decree ordaining the defenders, or one or other of them, to free and relieve the pursuers of all sums paid or expended by them for the maintenance of Mrs. S. R. or P., widow of the late J. P. [*designation*], from till 19 , and amounting in the aggregate to £ , conform to statement of account hereto attached.

Therefore the pursuers crave the Court—

To grant a decree against the said Parish Council of the parish of S., or otherwise against the said Parish Council of the parish of G., for payment to the pursuers of £ sterling, with interest from the date of citation: To ordain the defenders, or one or other of them, to free and relieve the pursuers of all further alimentary or other advances which the pursuers may make on behalf or on account of the said pauper, so long as she may require parochial aid and her parochial settlement continues to be in either of the said parishes of S. or G., with interest from the respective dates of the advances till payment; and to find the defenders, or either of them, liable in expenses.

CONDESCENDENCE.

1. On or about 19 , Mrs. S. R. or P., widow of the late J. P., Street, in the parish of G., then residing at L., in the parish of F., made application to the pursuers' inspector for parochial relief. The said Mrs. S. R. or P. was then a proper object of parochial relief.

2. The pursuers have alimented the said Mrs. S. R. or P. since the said date, and continue to do so. A statement of the sums so disbursed by them, and the dates on which the advances were made, amounting in all as at 19 to £ , is herewith produced and referred to.

3. The said Mrs. S. R. or P. was born at L., in the parish of F. She was married to the said deceased J. P., who was born at C., in the parish of S. She resided with her said husband at Street, in the parish of G., from 18 till the death of the said J. P. on 19 . In consequence of her marriage to the said J. P., the said Mrs. S. R. or P. acquired, and still retains, a settlement in either the parish of S. or the parish of G.

4. On or about 19 , the pursuers' inspector intimated to each of the defenders, in terms of the Poor Law Act, that the said Mrs. S. R. or P. had become chargeable to the parish of F., and that the said parish claimed relief from the parishes of S. and G.

5. On or about 19 , the inspector of the defenders, the Parish Council of the parish of S., wrote to the pursuers' inspector refusing to admit liability, on the ground that under the Poor Law (Scotland) Act, 1898, the said deceased J. P. had acquired a settlement in the parish of G., he having resided there for more than three years immediately preceding the date of his death. On or about 19 , the inspector of the defenders, the parish of G., wrote to the

pursuers' inspector refusing to admit liability of the said parish of G., on the ground that , and maintaining that the parish of L. was liable as .

PLEAS IN LAW.

1. The said J. P., having been born in the parish of S., and having no residential settlement at his death, that parish is the settlement of and liable for the maintenance of his pauper widow.

2. Or otherwise, the said J. P., having acquired a residential settlement in the parish of G., the settlement of his widow is in the said parish.

3. The settlement of the said Mrs. S. R. or P. being in either the parish of S. or the parish of G., the pursuers are entitled to decree as craved.

7. By Parish Council against Shipowner for Advances to Wife of Seaman.

Sheriffdom of at .

The Parish Council of the Parish of L., *Pursuers*,

against

R. A. [*designation*], owner of the ship *X.* of L., and D. B., presently a seaman on board the said ship, *Defenders.*

The demand of the pursuers is—

For a decree against the defender R. A. for payment by him to the pursuers of £ out of the wages due by him to the defender D. B. as a seaman on board the said ship *X.*, in respect of sums disbursed by pursuers for and on behalf of Mrs. M. F. or B., the said D. B.'s wife, from till , amounting in the aggregate to £ , conform to statement of account herewith produced.

Therefore the pursuers crave the Court—

To appoint a diet for the trial of the cause: To grant diligence against witnesses and havers therefor: To grant a decree against the defender R. A. for payment to the pursuer of £ sterling out of the wages owing by him to the defender D. B. as a seaman on board of the said ship *X.*; and to find the defenders liable in expenses in the event of their offering opposition hereto.

CONDESCENDENCE.

1. The defender R. A. is owner of the ship *X.* of L., and the defender D. B. was, during the voyage aftermentioned, a seaman on board said ship.

2. The said ship *X.* sailed from L. on or about 19 , on a voyage to the port of , and returned therefrom on or about 19 . The defender D. B. was an ordinary seaman on board said ship during the whole of the voyage, and the defender R. A. is due him a considerable sum for wages.

3. On or about 19 , Mrs. M. F. or B., residing at Street, L., the wife of the defender D. B., applied to the pursuers' inspector for parochial relief. The said Mrs. M. F. or B. was then a proper object of parochial relief.

4. The pursuers alimented the said Mrs. M. F. or B. from 19 to 19 . A statement of the sums disbursed by them for and on her behalf is herewith produced and referred to.

5. The pursuers are entitled, under and in terms of the Merchant Shipping Act, 1894, secs. 182 and 183, to be reimbursed out of the wages of any seaman earned during a voyage, any sums properly expended during his absence in the maintenance of his wife, not exceeding the half of his wages due to him by the owner of his ship.

6. On 19 the pursuers' inspector gave notice in writing to the defender R. A., stating that the pursuers claimed to be reimbursed for said advances out of the defender D. B.'s wages to the extent of one-half thereof, and requiring the said R. A. to retain such proportion in his hands for a period of twenty-one days from the time of the said D. B.'s return to his port of discharge.

PLEA IN LAW.

The pursuers having disbursed the sum sued for for the maintenance of the wife of the said D. B. during his absence on a voyage in the defender R. A.'s ship, are entitled to reimbursement of said advances out of the wages due to him.

8. By Successful Litigant (Defender) against Dominus litis for Recovery of Expenses.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender to pursuer of £50, the amount of the expenses to which pursuer was found entitled in an action at the instance of E. F. [*designation*] against him in this Court,

concluding for , in which the pursuer was assoilzied, with expenses, the said E. F. having been only nominal pursuer, the true *dominus litis* in which was the defender, and against whom, for said expenses, the Sheriff in his interlocutor, herewith produced, reserved all claims competent to pursuer.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £50, the amount of said expenses, with interest from the date of citation; and to find the defender liable in expenses.

CONDESCENDENCE.

1. On an action was raised in the Sheriff Court of shire at , at the instance of E. F. [*designation*], against the pursuer, concluding for [*state shortly the conclusions of the action*]. In said action the Sheriff on assoilzied the pursuer and found him entitled to expenses. In his defence to said action the pursuer alleged that the defender was the true *dominus litis*, and in respect thereof the interlocutor of the Sheriff reserved all claim of recourse competent to the pursuer against the defender for the expenses of the action. The expenses decerned for amounted as taxed to £50. The defender was the true *dominus litis* in said action, and the present action is brought to obtain decree against him for said sum of £50.

2. [*State specifically the facts and circumstances on which the pursuer relies. In order to make a person liable as* dominus litis *for expenses decerned for in an action to which he was no party, it must be established that he was truly the principal in the action and that the actual litigant was merely his agent* (*Fraser*, 1896, 23 *R.* 619).]

PLEA IN LAW.

The defender being the true *dominus litis* in the action above mentioned, the pursuer is entitled to decree as concluded for.

9. For Relief of Claim Paid under Decree.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For a decree ordaining the defender to free and relieve pursuer of the claim of damages made against him by E. F. [*designation*]

in respect of the loss and injury occasioned to the said E. F.'s horses by eating fodder supplied by pursuer, which fodder was sold to pursuer by defender on 2nd July 19 , by paying to pursuer £50, the principal sum and expenses awarded to the said E. F. on 1st February 19 in an action of damages instituted by him in this Court against pursuer, in respect of the said injury and loss.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of fifty pounds sterling, with interest from 1st February 19 until payment; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is a hay and corn merchant, carrying on business at . The defender is a farmer, residing at .

2. On 1st July 19 the defender sold to the pursuer 6 tons of hay, which the pursuer, on 2nd July, sold to E. F. [*designation*].

3. The said hay was given by the said E. F. to his horses for fodder, but the hay, being in bad condition, they were seriously injured by eating it. In consequence, the said E. F. raised an action of damages in the Sheriff Court at Edinburgh against the present pursuer, who intimated the same to the defender, who disclaimed responsibility.

4. On 1st February the Sheriff found the present pursuer liable to the said E. F. in damages, which, together with the expenses of the action, amount to £50 sterling, the sum now sued for. This sum has been paid by the present pursuer to the said E. F.

5. The defender has been called upon to relieve the pursuer by repaying to him the said sum, but he refuses to do so, and the present action has accordingly been rendered necessary.

PLEA IN LAW.

The defender being bound to relieve the pursuer of the sum paid by the latter to the said E. F. as condescended on, the pursuer is entitled to decree as craved.

10. For Relief of Claim in a Depending Action.

Sheriffdom of at .

A. B. [*designation*], proprietor of the estate of X. in the parish of Y. and county of Z., *Pursuer*,

against

C. D. [*designation*], shooting tenant on said estate, *Defender*.

The demand of the pursuer is—

For a decree ordaining defender to free and relieve the pursuer of an action for damages caused to crops by rabbits, in terms of a lease between pursuer and defender, dated , raised against the pursuer by E. F. [*designation*] on 19 , for the sum of £50 sterling, with interest and expenses, and of the whole sums, principal, interest, and expenses, concluded for, or that may be found or awarded in said action, and of all expenses incurred by the pursuer in connection therewith, by defending the said action for the pursuer, and by paying to the said E. F., or to pursuer, such sum, including interest and expenses, as E. F. may be found entitled to in said action.

Therefore the pursuer craves the Court—

To ordain defender to free and relieve pursuer of said action by defending same, and by paying to the said E. F., or to pursuer for payment to the said E. F., all sums, principal, interest, and expenses awarded or to be awarded to the said E. F. in said action; and to find defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is heritable proprietor of the estate of X., in the county of Y. The defender is shooting tenant of the game and rabbits on the said estate, under lease dated 19 .

2. By the said lease defender bound and obliged himself to [*quote provision or provisions of lease requiring the shooting tenant to keep down any excessive stock of rabbits or to relieve the landlord of any claims by tenants on the estate for damage caused to their crops by an excessive stock of game or rabbits*].

3. By lease, dated , the pursuer let to E. F. [*designation*] the farm of L., situated on his said estate of X., by which lease the pursuer *inter alia* bound himself to recompense the said E. F. for any damage to his crops caused by an excessive stock of rabbits being allowed in the coverts adjoining his said farm.

4. For some time past the said E. F. has made frequent complaints of the damage done to his crops by the excessive stock of rabbits kept in the coverts adjoining his farm, and on an action for damage thus caused was raised in this Court at the instance of E. F. against the pursuer, concluding for £50, with interest and expenses.

5. The pursuer has always communicated to the defender the complaints made by E. F., and has intimated to him that he will hold him liable to relieve him of any claim for damages at the instance of E. F. If the claim of damages by E. F. is well founded, it is due to the failure

of the defender to keep down the rabbits on the estate in terms of his lease. The defender refuses to acknowledge his liability to relieve the pursuer of the claim by E. F., or to defend the action at the instance of E. F., which has been duly intimated to him.

PLEA IN LAW.

The defender being bound by the terms of his lease as condescended on to relieve the pursuer of all claims by tenants for damage caused to their crops by an excessive stock of game, the pursuer is entitled to decree as craved.

Removal of Trustees.—*See* TRUSTS ACT, 1891.

Removing.—*See also* EJECTION.

NOTE.—*Removing is the process by which a tenant whose possession is founded upon a legal title, but whose right of occupation has expired, is judicially warned to remove from the subjects occupied by him, and, on failure to obey the warning so given, is removed or ejected from the premises. Ejection, on the other hand, is the process by which a person in occupation of heritable subjects which he possesses no right or title to occupy, is ejected from them. In this category are included persons whose occupancy or possession is vitious, that is, obtained by force and fraud; or precarious, that is, dependent on the will of the proprietor, and founded upon no legal title. In the case of a person who has occupied heritable subjects under a legal title, but whose tenure of occupation has come to an end, the decree of removing cuts down the legal right which he formerly possessed, and as therefore, consequent upon the decree, his occupation ceases to be founded upon a legal right or title, ejection becomes the competent remedy against him. The word ejection, therefore, besides meaning the independent action, to which, properly speaking, it is astricted, by which a person initially possessing no right or title of occupation is thrust forth from the subjects of which he is illegally in possession, may also be, and not uncommonly is, used both to signify the diligence by which a decree of removing is carried into effect and the actual carrying out of the tenant's removal, whether such removal has been preceded by an action of removing or of ejection or not.*

Under the nomenclature in use prior to the passing of the Sheriff Courts Act of 1907 *removings were divided into two classes—"ordinary" and "extraordinary." An ordinary removing was one which occurred at the natural termination of the tenant's rights, the period for which the*

subjects were leased having expired by the simple lapse of time. Extraordinary removings were those which occurred when the tenant's right was interrupted during the currency of the lease by a legal or conventional irritancy. Ordinary removings were again subdivided into two classes—"solemn," or those in which an action of removing required to be raised at least forty days before the actual term of removal, and "summary," or those in which less formal proceedings were necessary.

The Act of 1907 *does not deal with "extraordinary" removings at all, which remain, therefore, subject to the previously existing law, and it provides that with regard to "ordinary" removings the procedure in use prior to the Act is still to remain competent. The principal effect of the Act is to* (1) *define certain cases in which no process of removing or ejection is necessary;* (2) *define cases in which action forty days before the termination of the tenancy* (i.e. *"solemn" removing*) *is unnecessary; and* (3) *provide rules as to the requisite notices and as to procedure in all actions of removing.*

1. Extraordinary Removings.

NOTE.—*Actions of removing during the currency of a lease* (*or a feu*) *are founded on the allegation that the tenant has contravened one of the conditions of the let. Such conditions may be implied or express,* i.e. *imposed by law* (e.g. *that the tenant shall pay his rent*), *or by agreement* (e.g. *that the tenant shall not assign the lease*), *and the corresponding penalties for their infringement are known as "legal" and "conventional" irritancies respectively. The form of an action of removing is determined by the nature of the subjects let, the condition infringed, and the time at which the action is brought, and is regulated both by common law and by statute. It is not necessary in any action of removing to libel the Act of Parliament or Act of Sederunt founded on* (*Granger*, 1857, 19 *D.* 1010; *Lyon*, 1874, 1 *R.* 512).

All actions of declarator of irritancy and removing, whether at the instance of a superior against a vassal or of a landlord against a tenant, are now competent in the Sheriff Court (*Sheriff Courts Act*, 1907, *sec.* 5 (4)).

A. During Currency of Lease.

(a) Legal Irritancies.

1. DECLARATOR OF IRRITANCY OF LEASE AND FOR REMOVING AND PAYMENT OF ARREARS OF RENT, UNDER ACT OF SEDERUNT, 1756, SEC. 4.

[*This action is competent in all cases* (*irrespective of the date of the lease or size of the subjects let*) *in which the tenant is two years in arrear*

with his rent. It applies only to land let for agricultural or pastoral purposes.]

Sheriffdom of at .

A. B. [*designation*], proprietor of the farm and lands of L. in the parish of M. and county of N., *Pursuer*,

against

C. D. [*designation*], tenant of said farm under lease dated 19 , *Defender.*

The demand of the pursuer is—

For declarator that defender has incurred an irritancy of the said lease, in respect that he is two years in arrears with the rent for said farm, and that the same is now therefore null and void; for a decree ordaining defender, at the term of Whitsunday next, to flit and remove himself, his family, dependants, and sub-tenants, with their cattle, goods, gear, and effects, furth and from said farm, and to leave the same void and redd; and to grant a decree against the defender for payment to the pursuer of £ , with interest, in name of rent for said farm.

Therefore the pursuer craves the Court—

To find that the defender is in arrear to the extent of two years in his payment of the rent of two hundred pounds due by him yearly as tenant under the said lease; that the defender has thereby incurred an irritancy of the said lease; and that the said lease is now accordingly null and void: To ordain the defender summarily to flit and remove himself, his family, sub-tenants, cottars, and dependants, with their cattle, goods, and gear, furth and from the said farm and others, and to leave the same void and redd, under pain of ejection: To grant a decree against the defender for payment to the pursuer (First) of £200, with interest from [*the date at which first year's rent fell due*] until payment; (Second) the like sum and interest from [*date at which second year's rent fell due*]; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is heritable proprietor of the farm and lands of L. in the parish of M., and the defender is tenant under the pursuer of the said farm and lands, conform to lease, dated , entered into between the pursuer and defender for a period of nineteen years from and after the term of Whitsunday following, at an annual rent of £200, payable [*state terms*].

2. The defender has suffered two years' rent to be in arrear by failing to make payment of (1) the sum of £200, being the rent for the said farm and lands under said lease for crop and year 19 , which fell due at ; and (2) the sum of £200, being the rent for said farm and lands under said lease for crop and year 19 , which fell due at .

3. The pursuer has called upon the defender to make payment of said arrears, but he refuses or delays to do so.

PLEA IN LAW.

The defender being in arrears to the extent of two years in payment of his rent for the said farm, the pursuer is entitled to decree as craved.

2. FOR CAUTION OR REMOVING FOR NON-PAYMENT OF RENT, UNDER ACT OF SEDERUNT, 1756, SEC. 5.

NOTE.—*This action is competent, except as undernoted, when the tenant is one year in arrear with his rent. It applies only to land let for agricultural or pastoral purposes, and only to* (a) *leases current at Martinmas* 1881 *of any extent,* (b) *all leases not exceeding* 2 *acres in extent. It is not competent in any case in which proceedings may be taken under the Agricultural Holdings Act,* 1908, *sec.* 17 (3) (q.v.).

Sheriffdom of at .

A. B. [*designation*], proprietor of the farm of L. in the parish of M. and county of N., *Pursuer,*

against

C. D. [*designation*], tenant of said farm under lease dated 19 , and recorded 19 , *Defender.*

The demand of the pursuer is—

For a decree ordaining defender to find caution for payment to the pursuer of the arrears of rent and the rent to become due under said lease, and failing defender finding satisfactory caution within such time as the Court may appoint, for a decree ordaining defender to flit and remove himself, his family, sub-tenants, and dependants, furth and from said farm under pain of ejection.

Therefore the pursuer craves the Court—

To ordain the defender to find caution acted in the Books of Court to the satisfaction of the Clerk of Court for payment to the pursuer of (First) £100, being one year's rent due to the pursuer under said lease; and (Second) the rents thereof for the five

crops following [*or, if the lease has less than five years to run,* for the remaining rents thereof to become due under the said lease], payable £50 at the term of Martinmas 19 , and £50 at each term of Whitsunday and Martinmas of the four succeeding years, for said crops and years; and failing his finding caution as aforesaid within such period as the Court shall appoint, to ordain the defender summarily to flit and remove himself, his family, sub-tenants, cottars, and dependants, with their cattle, goods, and gear, furth and from the said farm and lands and pertinents, and to leave the same void and redd, under pain of ejection; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is heritable proprietor of the farm and lands of L. in the parish of M., and the defender is tenant under the pursuer of the said farm and lands, conform to lease, dated 1st March 19 and recorded , entered into between the pursuer and defender. Said lease is for a period of years from and after the term of Whitsunday following, at an annual rent of £100, payable half-yearly at Martinmas and Whitsunday.

2. The defender has run in arrear of one full year's rent by failing to make payment to the pursuer of the sum of £100, being the rent for crop and year 19 , falling due, £50 thereof at Martinmas 19 and £50 at Whitsunday 19 .

3. The pursuer has called upon the defender to make payment of said sum, but he refuses or delays to do so.

PLEA IN LAW.

The defender being in arrear to the extent of one full year in payment of his rent for the said farm, the pursuer is entitled to decree as craved.

3. FOR CAUTION OR REMOVING FOR DESERTION OF POSSESSION, UNDER ACT OF SEDERUNT, 1756, SEC. 5.

NOTE.—*This action is competent, except as undernoted, where the tenant has deserted his possession and left it unlaboured at the usual time of labouring. It only applies to land let for agricultural or pastoral purposes, and only to* (a) *leases current at Martinmas* 1881 *of any extent,* (b) *all leases not exceeding* 2 *acres in extent. It is not competent in any case in*

which proceedings may be taken under the Agricultural Holdings Act, 1908, *sec.* 17 (3) (q.v.).

Sheriffdom of at .

A. B. [*designation*], proprietor of the farm of L. in the parish of M. and county of N., *Pursuer*,

against

C. D. [*designation*], tenant of said farm under a lease dated 19 , and recorded 19 , *Defender*.

The demand of the pursuer is—

For a decree ordaining defender to find satisfactory caution for payment to the pursuer of the arrears of rent and the rent to become due under said lease, under pain of ejection.

Therefore the pursuer craves the Court—

To ordain the defender to find caution acted in the Books of Court to the satisfaction of the Clerk of Court for payment to the pursuer of (First) £50, being six months' rent presently due by him to the pursuer under said lease, and (Second) the rents thereof for the five crops following [*or, if the lease has less than five years to run*, for the remaining rents thereof to become due under the said lease], payable £50 at the term of Martinmas 19 and £50 at each term of Whitsunday and Martinmas of the four succeeding years for said crops; and failing his finding caution as aforesaid, &c. [*as in preceding form*].

CONDESCENDENCE.

1. The pursuer is heritable proprietor of the farm and lands of L. in the parish of M., and the defender is tenant under the pursuer of the said farm and lands, conform to lease, dated 1st March 19 , and recorded , entered into between the pursuer and defender. Said lease is for a period of years from and after the term of Whitsunday following, at an annual rent of £100, payable half-yearly at Martinmas and Whitsunday.

2. The defender has deserted his possession of said farm and lands, and has left it unlaboured at the usual time of labouring. [*State the facts as to desertion upon which the pursuer relies.*]

PLEA IN LAW.

The defender having deserted his possession of said farm, and left it unlaboured at the usual time of labouring, the pursuer is entitled to decree as craved.

4. For Removing for Non-Payment of Rent, under the Agricultural Holdings Act, 1908, Sec. 17.

[*This action is competent in all cases, except as undernoted, in which the tenant is six months in arrear with his rent, and "in which the landlord's right of hypothec has ceased and determined"* (*sec.* 17), *viz. leases not current at Martinmas* 1881, *of subjects exceeding* 2 *acres in extent. It applies only to land let for agricultural or pastoral purposes or both, or cultivated as a market garden, and does not apply to land let to the tenant during his continuance in any office, appointment, or employment of the landlord* (*Agricultural Holdings Act,* 1908; *Sheriff Courts Act,* 1907, *r.* 110).]

(*See* Agricultural Holdings Act.)

5. For Removing for Non-Payment of Rent in Feus and Long Leases.

(*See* Declarator of Irritancy of Feu, No. 5.)

(b) Conventional Irritancies.

Note.—*Actions of removing founded on a breach of an express obligation in a lease are competent in the Sheriff Court. They are brought at common law, and apply both to agricultural and urban subjects, and both to leases and feus. The grounds of action are as numerous as the conditions which parties choose to insert in a lease and to fence with the penalty of irritancy and removing. When the fact on which the irritancy depends is admitted or instantly verifiable, declarator of irritancy is not required. An example of this is given* infra. *Otherwise, as in the style immediately following, a conclusion for declarator is required. The styles given are those applicable to the case of leases. For a corresponding style applicable to feus, see* Declarator, No. 4.

1. Declarator of Irritancy of Lease and for Removing against Agricultural Tenant for Breach of Obligation to Reside.

Sheriffdom of at .

A. B. [*designation*], proprietor of the farm of L. in the parish of M. and county of N., *Pursuer,*

against

C. D. [*designation*], tenant of said farm under a lease dated and recorded 19 , *Defender.*

The demand of the pursuer is—

For declarator that by reason of defender's failure to reside personally on said farm he has incurred an irritancy of said lease which is accordingly now null and void, and for a decree ordaining defender to flit and remove himself [*as in preceding styles*].

Therefore the pursuer craves the Court—

To find and declare that the defender, having failed to reside personally with his family upon the said farm, has thereby, in terms of the said lease, incurred an irritancy of said lease, and that the said lease, with all that has followed thereon, is now null and void: To ordain the defender summarily to flit and remove himself, his family, sub-tenants, cottars, and dependants, with their cattle, goods, and gear, furth and from the said farm and others, and to leave the same void and redd, under pain of ejection; and to find the defender liable in expenses.

Condescendence.

1. The pursuer is heritable proprietor of the farm and lands of L. in the parish of M., and the defender is tenant under the pursuer of the said farm and lands, conform to lease, dated , entered into between the pursuer and the defender, for nineteen years from and after the term of , at a yearly rent of £25.

2. By said lease it is *inter alia* provided that the defender should reside personally with his family upon the said farm, and that, should he fail to do so, then the said lease should, in the option of the pursuer, become *ipso facto* null and void as if the same had never been entered into; and all right, title, or management of or in the said farm competent to the defender under the said lease should cease and terminate, and the same should in the option of the pursuer be forfeited to him accordingly.

3. The defender has failed to reside personally with his family upon said farm, in terms of said lease. [*State facts as to desertion upon which pursuer relies.*]

4. The pursuer has called upon the defender to fulfil the condition in the lease as to residence or to remove, but he refuses or delays to do so.

Plea in Law.

The defender having failed to reside personally with his family upon said farm, the pursuer is, in terms of his lease with the defender, entitled to decree, with expenses, as craved.

2. For Removing against Urban Tenant on Ground of Bankruptcy.

(*See* Sheriff Courts Act, 1907, Sec. 34.)

Sheriffdom of at .

A. B. [*designation*], proprietor of the house No. Street, , *Pursuer*,

against

C. D. [*designation*], tenant of said house under lease dated , *Defender*.

The demand of the pursuer is—

For declarator that by reason of defender's bankruptcy he has, in terms of said lease, incurred an irritancy thereof, and that it is now accordingly null and void; and for a decree ordaining defender summarily to remove and flit himself, family, sub-tenants, and dependants furth and from said house under pain of ejection.

Therefore the pursuer craves the Court—

To find and declare that in respect of said bankruptcy the defender has incurred an irritancy of said lease which is now accordingly null and void: To ordain the defender summarily to flit and remove himself, his family and servants, with their goods, gear, and whole belongings, furth and from the said house, and to leave the same void and redd, under pain of ejection; and to find the defender liable in expenses.

Condescendence.

1. The pursuer is heritable proprietor of the house situated at No. Street, , and the defender is tenant thereof under the pursuer, conform to lease, dated , entered into between the pursuer and the defender, for ten years from and after the term of .

2. By said lease it is *inter alia* provided that in case the defender should become notour bankrupt, or suffer his effects to be sequestrated, or execute any trust conveyance of his property in favour or for behoof of creditors, then the said lease should, in the option of the pursuer, become *ipso facto* null and void as if the same had never been entered into; and all right, title, or management of or in the said house competent to the defender under the said lease should cease and terminate, and the same should in the option of the pursuer be forfeited to him accordingly.

3. On the defender executed a trust-deed for behoof of

his creditors, by which he conveyed all his property to E. F. [*designation*], as trustee. [*State any other facts which may be material.*]

4. The pursuer has called upon the defender to remove, but he refuses or delays to do so.

PLEA IN LAW.

The defender having executed a trust conveyance of his property in favour or for behoof of his creditors, the pursuer is, in terms of his lease with the defender, entitled to decree, with expenses, as craved.

B. At Termination of Lease.

NOTE.—*By rule* 110 *of the Sheriff Courts Act of* 1907 *an action of removing may now be raised at any time, provided* (1) *the tenant has bound himself to remove, in writing dated and signed, within twelve months of the term of removal; or* (2) *if there be no such writing, provided intervals of the following duration respectively elapse between the notice of removal and the term of removal*—(a) *in the case of a lease of three years and upwards of lands exceeding two acres, the interval must be not less than one year nor more than two years;* (b) *in the case of a lease of such lands, written or verbal, from year to year or for less than three years, the interval must be not less than six months. The further provision of rule* 110—(c) *requiring forty days' notice in the case of certain heritable subjects (excepting land exceeding two acres and let for a year or more) is superseded, so far as regards subjects falling under the Agricultural Holdings Act,* 1908, *by sec.* 18 *of that Act, which requires the notice to be of one year or of six months, as the case may be.*

The Act of 1907 *defines certain cases relating to land exceeding two acres in extent in which ejection may be carried out without any process of removing or ejection. In the cases to which the sec.* 34 *of the Act apply a notice to remove must be given within the time specified, unless where the tenant has granted a letter of removal, dated and signed within twelve months before the date of removal or before the first ish, in which case no notice is necessary (Sched.* 35). *The Act does not provide any particular form for the various notices which require to be given, which are left to the discretion of the party giving them.*

In certain other cases relating to land exceeding two acres in extent the ejection of the tenant may be effected without any previous action of removing (secs. 36, 37, *and* 38). *In the cases specified a notice of removal (Forms H and I of the Act) must be given to the tenant within a certain specified time. In each case, if the tenant fails to remove within the time specified in the notice the proprietor may apply for a warrant for summary ejection. (See Watson's Trs.* v. *O'Neill,* 1910, 2 *S.L.T.* 392.)

1. For Warrant of Summary Ejection, under Sec. 36 of the Sheriff Courts Act, 1907.

Sheriffdom of at .

A. B. [*designation*], proprietor of the farm of L. in the parish of M. and county of N., *Pursuer*,

against

C. D., farmer, tenant of said farm, *Defender*.

The demand of the pursuer is—

For warrant to summarily eject the defender from said farm, which he occupies without written lease and without having given pursuer a letter of removal, the tenancy of which has expired by notice duly given in terms of sec. 36 of the Sheriff Courts (Scotland) Act, 1907.

Therefore the pursuer craves the Court—

To grant warrant to officers of Court to summarily eject the defender, his family, sub-tenants, cottars, and dependants, with their cattle, goods, and gear, furth and from the said farm and lands; and to find the defender liable in expenses.

Condescendence.

1. The defender has for some years occupied the pursuer's said farm without any written lease and without having given the pursuer any letter of removal therefrom.

2. The pursuer determined the tenancy by written notice given to the defender on last, requiring him to remove therefrom as at the term of Whitsunday last, conform to certificate and notice produced.

3. The defender failed to remove at said term, and still refuses or delays to do so.

Plea in Law.

The pursuer having given due notice to the defender to remove from said farm, and defender having failed to remove on the date specified, pursuer is entitled to warrant of summary ejection as craved.

2. For Warrant of Summary Ejection, under Sec. 37 of the Sheriff Courts Act, 1907.

Sheriffdom of at .

A. B. proprietor of the lands of L. in the parish of M. and county of N., *Pursuer*,

against

C. D., tenant under pursuer of [*describe subjects*], *Defender*.

The demand of the pursuer is—

For warrant to summarily eject the defender from said subjects, in terms of sec. 37 of the Sheriff Courts (Scotland) Act, 1907.

Therefore the pursuer craves the Court—

To grant warrant to officers of Court to summarily eject the defender, his family, sub-tenants, and dependants, with their goods, gear, and cattle, furth and from said subjects; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The defender is tenant under the pursuer of the said subjects, by virtue of a lease dated 19 , for years. His tenancy expired at the term of Whitsunday last. Notice in writing was given by the pursuer to defender on 19 , requiring him to remove therefrom at the said term of Whitsunday, conform to certificate of notice herewith produced.

2. Notwithstanding said notice defender failed to remove at the said term, and still refuses to do so.

PLEA IN LAW.

The defender having failed to remove from said subjects in terms of the statutory notice duly given him by pursuer, warrant for his summary ejection should be granted as craved.

3. SUMMARY REMOVING, UNDER SEC. 38 OF THE SHERIFF COURTS (SCOTLAND) ACT, 1907.

NOTE.—*In this case the decree is declared to have the force and effect of a decree of removing and warrant of ejection. The Act prescribes a special form of writ (Form K), which, however, is practically the same as the ordinary writ. Notice of removal must be given as prescribed in sec.* 38 *and rule* 113, *a certificate or acknowledgment of which is sufficient evidence* (*r.* 114). *The warrant of service may be signed by the Sheriff Clerk, although the* induciæ *is only two days* (*r.* 116). *The procedure is prescribed in rules* 119-122, *and the form of decree is Form L of the Act.*

Repair, to.—*See* DECLARATOR; GABLE; INSPECTION.

Reparation.—*See also* DECLARATOR; DELIVERY; HARBOUR; ILLEGAL DILIGENCE; IMPLEMENT; INFRINGEMENT; INTERDICT; LEASES; MARRIAGE; MASTER AND SERVANT.

NOTE.—*For convenience of reference, all actions for damages (so far as not given under special headings) have been collected under this title, without attempting to distinguish between those arising out of contract and those based on negligence.*

1. Abuse of Process.

NOTE.—*There is a distinction between the use of proceedings requiring no special legal authority for their initiation, or granted* de plano *on mere* ex parte *representations, and those diligences which require the special warrant of a Court. The first class includes all ordinary actions in Court, sequestrations, and arrestments and inhibition in security. Failure in such proceedings will not found a claim for reparation, unless malice and want of probable cause can be averred, or the warrant, &c., in the case of diligence was bad. In the second class, including* fugæ *warrants, warrants to imprison, interdicts, and sequestrations for rent, want of success is sufficient proof of wrongfulness, and therefore of liability in reparation, and no averment of malice and want of probable cause is necessary.*

(1) ARRESTMENT (WRONGFUL).

(*See* ILLEGAL DILIGENCE.)

(2) ARRESTMENT OF SHIP (WRONGFUL).

(*See* ARRESTMENT, No. 7.)

(3) CHARGE (WRONGFUL).

NOTE.—*Besides the creditor at whose instance the diligence is used, the agent who instructed it, and the messenger or officer who executed it, and the cautioner for the latter are all liable to be sued for reparation if the diligence is wrongful.*

In the case figured malice and want of probable cause do not need to be averred (*Smith & Co.* v. *Taylor*, 10 *R.* 291).

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], and R. S., solicitor, Street, ,
Defenders.

The claim of the pursuer is—

For payment by the defenders jointly and severally of £ , as damages sustained by pursuer in consequence (1) of S. F., sheriff-officer, , acting on the instructions of the defenders, having given pursuer a wrongful and illegal charge to pay the contents of a bill for £ , drawn by defender C. D. upon and accepted by pursuer on 19 ; and (2) of the defender R. S., founding upon said expired charge, and acting for and on the instructions of defender C. D., having illegally and unwarrantably presented a petition for *cessio bonorum* of pursuer's estates in the Sheriff Court of at , on 19 , and obtained a warrant on and advertised the same in the *Gazette*.

Therefore the pursuer craves the Court—

To grant a decree against the defenders jointly and severally for payment to the pursuer of £ sterling, with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The pursuer is a commission agent, and resides with his wife and family at No. X. Street, . His principal business is in Scotland, and while travelling there he usually makes his head-quarters at No. R. Crescent, , where he occupies a sitting-room and bedroom, for which he pays weekly. The defender C. D. is a tailor in , and the defender R. S. is his law-agent.

2. On 19 the pursuer accepted a bill drawn on him by the defender C. D. at months for the sum of £ , payable at . In the beginning of the month of the pursuer fell ill with typhoid fever and was taken to the Fever Hospital, where he remained until 19 . From until 19 he was unable to receive or reply to any business communications.

3. On 19 the said bill was presented for payment, but owing to the pursuer's illness was not paid. As the pursuer now learns, it was thereupon immediately protested, and the protest registered by the defender C. D.

4. On 19 S. F., sheriff-officer, , acting on the instructions of the defenders C. D. and R. S., left a schedule of charge for the pursuer at No. R. Crescent aforesaid, requiring him to make payment of the contents of the said bill on an *inducie* of six days, under pain of poinding. The said schedule of charge is herewith produced and referred to.

5. On 19 the said defender R. S. presented in the Sheriff Court of , at , a petition for and in name of the defender C. D., praying that decree of *cessio bonorum* should be granted against the pursuer. In the said petition it was averred that the pursuer was notour bankrupt in respect of insolvency concurring with execution of the said charge for payment and expiry of the days of charge. On 19 the Sheriff-Substitute granted warrant in terms of the petition, and on 19 copies of the said petition and warrant were left for the pursuer at No. R. Crescent aforesaid, and on the same day a notice of the said petition for cessio and warrant thereon was published in the *Edinburgh Gazette* of that date.

6. On 19 the pursuer, while still in the Hospital, received a number of letters addressed to him at R. Crescent, including the said schedule of charge and petition for cessio and warrant. He at once wrote the defender C. D. tendering payment of the sums claimed in the said charge, viz., £ , but the defender R. S. replied, declining to accept that sum, and requiring payment of £ in addition thereto as the costs of the said application for cessio and procedure thereon. To avoid further injury to his business and reputation, the pursuer, under protest, paid the said sum of £ to the said R. S. on 19 , and the receipt therefor is herewith produced.

7. The said charge given to the pursuer was illegal and invalid, in respect—(1) that No. R. Crescent was not the pursuer's dwelling-house, and (2) the pursuer being resident furth of Scotland, viz., in , the *inducia* of charge on the said protest should have been fourteen days instead of six days as in the said schedule of charge. The said charge, execution thereof, application for cessio and procedure thereon were thus invalid, illegal, and unwarrantable.

8. Through the said illegal actings of the defenders, and particularly the publication of the said notice of cessio in the *Edinburgh Gazette*, the pursuer has suffered and will suffer serious loss, injury, and damage to his business reputation to an extent greatly in excess of the sum sued for. The pursuer has applied to the defenders for an apology for their illegal actings as aforesaid, and for compensation for the loss thereby caused to him, but they refuse either to apologise or to make compensation to him, and the present action is therefore necessary.

Pleas in Law.

1. The charge given to the pursuer by or on behalf of the defenders being illegal and unwarrantable as condescended on, the defenders are liable to the pursuer in damages as craved.

2. The defenders having illegally and unwarrantably presented a petition for cessio of the pursuer, and obtained a warrant on and advertised the same in the *Gazette*, are liable to the pursuer in reparation therefor.

(4) Decree (Wrongful).

Note.—*A general averment of malice and want of probable cause is usually sufficient in actions for reparation for wrongful judicial proceedings, without stating the facts and circumstances from which they are inferred.*

Taking decree after a debt is paid is actionable only if malice can be averred. But malice will be inferred from the fact of taking decree in the knowledge that the debt has been paid.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of £ , as damages sustained by the pursuer in consequence of defender having on 19 wrongfully, maliciously, and without probable cause taken or allowed decree in absence against pursuer in an action in the Small Debt Court at at the instance of E. F., painter, Street, .

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, with expenses.

Condescendence.

1. The pursuer is a house agent, and resides at No. Street, . The defendant is an accountant and debt collector, and carries on business at No. Street, .

2. On 19 E. F., painter, No. Street, , rendered to the pursuer an account amounting to £ for painter work executed by him at pursuer's residence. In consequence of a difference as to certain of the charges, the pursuer declined to pay the full amount charged, and on 19 the defender, on the instructions of the said E. F., took out a small debt summons for the account. This was served at the pursuer's residence during his absence from town.

3. Immediately on pursuer's return to town on 19 , he called on the said E. F., and adjusted with him the said account at £ , for which sum he handed E. F. his cheque. Thereafter on

the same evening he called on the defender, and exhibited to him the receipted account, and handed to him a letter from E. F. requesting him to withdraw the action. At the same time the pursuer tendered to the defender payment of any expenses incurred in the action, but as the defender did not then know the exact amount thereof it was arranged that a note of these expenses should be sent to the pursuer the following day.

4. Relying on the action being withdrawn in accordance with the said E. F.'s instructions, the pursuer did not attend the Small Debt Court on the following day, 19 , and he heard nothing further of the matter until on 19 his attention was drawn by several persons to the fact that his name was published in as having allowed decree in absence at the instance of the said E. F. to pass against him in the Small Debt Court for the said sum of £ .

5. On making inquiries the pursuer found that, notwithstanding the said instructions, the defender had, wrongfully, maliciously, and without probable cause, taken decree in the small debt action at the instance of the said E. F. against the pursuer for the said sum of £ .

6. By the defender's wrongfully and maliciously taking said decree the pursuer has suffered serious loss, injury, and damage. Large sums of money pass through his hands as factor, and the maintenance of his credit and reputation is absolutely essential to his business success. In particular, the pursuer is largely employed by solicitors, accountants, and others who have occasion to see the said published lists of debtors and decrees, and the fact that the said decree was pronounced against pursuer in absence has become widely known amongst those employing him, and has seriously affected, and will continue to affect, his credit and reputation. The pursuer has also suffered in his feelings by being held up to his friends and employers and the public as a person unable to pay his debts. The loss, injury, and damage which he has suffered and will suffer through defender's wrongful and malicious acts above condescended on are moderately estimated at the sum of £ , being the sum sued for.

7. The pursuer has applied to the defender for reparation for the loss, injury, and damage which he has sustained as condescended on; but the defender refuses to compensate him therefor, and the present action is therefore necessary.

Plea in Law.

The pursuer having suffered loss, injury, and damage through the wrongful and malicious acts of defender as condescended on, is entitled to reparation therefor.

(5) Interdict (Wrongful).

Note.—*As interim interdict is always granted* periculo petentis, *the applicant will be liable for all damage caused by the interdict should it from any cause turn out to be bad.*

Sheriffdom of at .

A. B. [*designation*], proprietor of Nos. 14, 16, and 18 R. Street, , *Pursuer*,

against

C. D. [*designation*], proprietor of No. 3 M. Terrace, adjoining pursuer's said property on the north, *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of £ , as damages sustained by pursuer in consequence of defender having on 19 wrongfully and illegally applied for and obtained in this Court, and thereafter enforced, an interim interdict against pursuer's proceeding with the building of a tenement of houses, occupying *inter alia* a passage between pursuer's and defender's said properties, belonging to pursuer.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and expenses.

Condescendence.

1. Prior to Whitsunday 19 the pursuer's said property consisted of three self-contained cottages. The said cottages did not occupy the whole frontage of the pursuer's ground, but left a passage of about 10 feet between the gable of the eastmost cottage and the boundary wall. By the said passage access was provided to the back gardens of the said cottages, and by courtesy of the pursuer and his predecessors in the said property, the defender had been permitted to use the said passage as an access to the garden behind his house.

2. At Whitsunday 19 the pursuer took down the said three cottages and commenced to erect on the site a tenement of houses, which occupied the whole frontage of the pursuer's property, including the said passage. The defender, founding upon certain agreements and transactions between his and the pursuer's authors, claimed that either by agreement or implied grant he had a right of access by the said passage. On the pursuer declining to admit this claim, the defender applied to your Lordship for, and obtained, interim interdict against the pursuer's proceeding with his building until he had an opportunity of settling the question by raising a declarator.

3. Accordingly the defender raised an action of declarator of the said right of access, but after procedure the pursuer was ultimately assoilzied from the whole conclusions of the action, with expenses. A copy of the closed record and interlocutors in the said action is herewith produced and referred to.

4. Through the said interim interdict the pursuer was prevented from having the said tenement finished in time for occupation at Whitsunday 19 . He thus lost a whole year's rent, which amounts to £ . Further, during the time the building was under interdict, the prices of both materials and labour were increased, so that the tenement ultimately cost £ more to erect than if it had been allowed to proceed under the original contracts. The pursuer had also to pay a sum of £ to the contractor in name of damages for breach of the original contract. The said three sums, amounting together to the sum of £ , are the sum sued for.

5. The pursuer has applied to the defender to make payment of the sums so lost by him, but the defender declines or delays to make reparation.

PLEA IN LAW.

The pursuer having, through the defender's illegal application for and use of interim interdict, suffered loss and damage to the extent sued for, is entitled to reparation as craved.

(6) POINDING (EXCESSIVE).

(*See* POINDING, No. 2.)

(7) POINDING (WRONGFUL).

NOTE.—*Poinding may be wrongful*—(1) *where the warrant is bad*, (2) *where the poinding is irregularly proceeded with, and* (3) *where in the circumstances it was unjustifiable.*

Sheriffdom of at .

A. B., clerk, 115 X. Street, , *Pursuer*,

against

C. D., grocer, 25 R. Street, , and E. F., sheriff-officer, , *Defenders.*

The claim of the pursuer is—

For payment by the defenders, jointly and severally, to the pursuer of £ , as damages sustained by the pursuer in consequence of the defender E. F. having, on the instructions of the

defender C. D., on 19 , wrongfully, illegally, and oppressively carried through an alleged poinding of pursuer's effects in his said house.

Therefore the pursuer craves the Court—

To grant a decree against the defenders, jointly and severally, for payment to the pursuer of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. On 19 the defender C. D. obtained a decree for the sum of £ against the pursuer in the Sheriff Small Debt Court at .

2. On 19 the defender E. F., acting on the instructions of the defender C. D., proceeded to the pursuer's dwelling-house at 115 X. Street, , and carried through an alleged poinding of pursuer's effects therein, in execution of said decree. The said alleged poinding was carried out in a wrongful, illegal, and oppressive manner. The two persons who accompanied the defender E. F. as appraisers were not put on oath, and their alleged appraisement was conducted without any regard to the true value of the articles poinded. Many articles which ought to have been valued separately were slumped together, and the values put upon them were absurdly inadequate. In particular, the whole furniture of a room, comprising a table, six chairs, sofa, and two bookcases, were valued in one lot at £1, 15s., their real value being not less than £ [*narrate in detail any other instances of reckless appraisement, giving in each case the true value of the articles*].

3. The values so placed upon the articles alleged to be poinded as aforesaid were each and all unjust and utterly inadequate. No attempt was made to arrive at the real value of the articles poinded, the object being not to ascertain their true value, but to appraise them at such figures as would make up the sum contained in the decree, and in fact the whole furniture and plenishing of the house were appraised at the exact sum in the decree, viz., £ .

4. On 19 the defender E. F., acting on the instructions of the defender C. D., took the whole of the said effects, alleged to be poinded as aforesaid, to , and the same were there exposed for sale by public roup, but as no one appeared to offer therefor, the whole of said effects were wrongfully, illegally, and oppressively declared to belong to the said C. D. at the said sum of £ , at which they were said to have been appraised as aforesaid.

5. On 19 an agent on behalf of the pursuer intimated

to the defenders that the whole of the said proceedings were wrongful, illegal, and oppressive, and that unless the effects alleged to be poinded and sold as aforesaid were restored to the pursuer, the defenders would be held liable in damages. Notwithstanding the said intimation, the defender C. D. caused the said articles to be sold by public auction within Messrs. saleroom at , where they realised a sum of upwards of £ .

6. The actings of the defenders, as above condescended on, were wrongful, illegal, and oppressive, and malicious and without probable cause, and the pursuer has thereby suffered loss, injury, and damage to not less than the sum sued for. He has applied to the defenders to compensate him for the said loss and injury and damage, but they deny any liability therefor, and the present action is thus necessary.

PLEA IN LAW.

The pursuer having suffered loss, injury, and damage in consequence of the wrongful, illegal, and oppressive actings of the defenders as condescended on, is entitled to reparation from the defenders therefor.

(8) SEQUESTRATION (WRONGFUL).

NOTE.—*So far as regular, the proceedings are judicial proceedings and are not actionable merely because sequestration may be subsequently recalled, unless malice can be averred. But as sequestration is awarded on the faith of the statements in the petition being true, any untruth in essentials will ground an action of damages without averring malice. Either the creditor or his agent, or both, may be sued.*

See also No. (2), supra.

Sheriffdom of . . at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], against whom arrestments *ad fundandam jurisdictionem* have been used; and X. Y., solicitor, No. Street, , *Defenders*.

The claim of the pursuer is—

For payment by the defenders, jointly and severally, to the pursuer of £ , as damages sustained by the pursuer in consequence (1) of the defender X. Y. having, upon the instructions of and as acting for the defender C. D., upon 19 , wrongfully and illegally caused the pursuer to be charged for payment of a sum due under a judgment of the High Court of

Justice in England in an action at the instance of defender C. D. against pursuer; and (2) of the defenders, founding upon the said alleged and expired charge, having unwarrantably, illegally, and wrongfully, on 19 , presented an application to this Court for *cessio bonorum* against the pursuer, and published in the *Gazette* an intimation of the presentation of said petition and of the warrant thereon.

Therefore the pursuer craves the Court—

To grant a decree against the defenders, jointly and severally, for payment to the pursuer of £ , with interest from the date of citation, and expenses. [And to grant warrant, &c.]

CONDESCENDENCE.

1. The pursuer is a tailor, and carries on business at Street, . The defender C. D. is a tweed merchant in , and the defender X. Y. is a solicitor in , and acted as agent for the defender C. D. in the proceedings hereinafter mentioned.

2. On 19 the defender C. D. obtained judgment in the High Court of Justice in England against the pursuer for the sum of £ , and on 19 a certificate of said judgment was registered in the Books of Council and Session under the Judgments Extension Act, 1868. The defender C. D. employed the defender X. Y. to enforce said certificate of judgment against the pursuer.

3. On or about 19 the defenders caused the pursuer to be charged for payment of the sum due under the said judgment. By said charge the pursuer was wrongfully and illegally required to make payment to the defender C. D. of the sum claimed by him within six days from the date of service of the said charge, contrary to the Act of Sederunt of 11th July 1871, which provides that the *inducicæ* of charge on a certificate of judgment registered under the said Act shall be fifteen days. The said charge was therefore illegal and inept, and the pursuer was not bound to pay obedience thereto. The schedule of charge is produced herewith and referred to.

4. On 19 , being days from the date of said charge, the defenders, without further application to pursuer, presented to the Sheriff of , at , a petition for a decree of *cessio bonorum* against the pursuer. In the said petition the defenders averred that the pursuer was unable to pay his debts and was notour bankrupt. The only evidence produced by them in support of these averments was the execution of the before-mentioned illegal charge. The said averments were false and calumnious and without foundation in fact.

5. On 19 , on the said petition, the Sheriff granted warrant to publish a notice of the application in the *Edinburgh Gazette*, and on 19 a copy of said petition and warrant was served on the pursuer, and on the following day the statutory notice was published in the *Edinburgh Gazette*, intimating the presentation of the petition, and requiring all creditors of the pursuer to appear in Court on . Copies of the said petition, warrant thereon, and *Gazette* containing said notice, are herewith produced and referred to.

6. The said charge and whole proceedings following thereon, as above set forth, were unwarrantable, illegal, and wrongful, and were taken by the defenders recklessly and in contravention of the provisions of the statutes thereanent. By the said proceedings the pursuer has been publicly advertised as bankrupt, and his credit and reputation have been seriously damaged and his feelings injured, by said wrongful acts of the defenders, and they are liable in reparation.

7. The pursuer has applied to the defenders for compensation, but they deny liability therefor, and the present action has therefore been rendered necessary.

PLEA IN LAW.

The pursuer having suffered loss, injury, and damage through the wrongful acts of the defenders as condescended on, is entitled to reparation from the defenders therefor.

(9) SEQUESTRATION FOR RENT (WRONGFUL).

(*See* ILLEGAL DILIGENCE.)

2. Apprehension (Wrongful).

In the case figured the terms of secs. 34 *and* 55 *of the Pawnbrokers Act,* 1872, *would require to be kept in view.*

(*Instance as in No.* (3), supra.)

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as damages sustained by the pursuer in consequence of defender having, on 19 , wrongfully, maliciously, and without probable cause, caused pursuer to be apprehended for the theft of a bicycle which he had endeavoured to pawn with defender.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The pursuer is twenty-five years of age, and is by occupation a labourer. The defender is a pawnbroker in .

2. On or about the 19 , the pursuer went to the defender's premises in X. Street, , and offered in pledge a bicycle. The defender asked the pursuer several questions as to how long he had had the bicycle, from whom it was purchased, what was paid for it, &c., all of which the pursuer truthfully answered. The defender then asked the pursuer to wait while he went to the back shop for some purpose. In a few minutes, however, he returned with a police constable, who, at the defender's request, and on his stating that he believed the bicycle to have been stolen, took the pursuer into custody, and conducted him through the public streets to the police station at Y. Street, a distance of more than half a mile.

3. The pursuer repeated to the police the statements he had already made to the defender, and after a detention of about two hours was set at liberty.

4. The information which the pursuer gave to the defender in answer to his questions was true, and satisfactorily accounted for his possession of the bicycle, and the defender had no reasonable ground for suspicion that the pursuer had stolen or illegally or clandestinely obtained it. In causing the pursuer to be taken into custody and conducted to the police station, the defender acted illegally, wrongfully, and maliciously, and without probable cause, and he is liable in reparation to the pursuer for the injury to the pursuer's feelings and reputation thereby caused.

PLEA IN LAW.

The defender having wrongfully, maliciously, and without probable cause caused the pursuer to be apprehended, is liable to the pursuer in reparation therefor.

3. Arrestment (Breach of).

If preferred, a furthcoming may be used with the same effect.

The sum which can be recovered is—(1) *the value of the arrested subject where that is less than the sum for which arrestment has been used; or* (2) *the whole sum for which arrestment has been used whenever this is less than the value of the arrested subjects or their value cannot be ascertained.*

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

[NOTE.—*There may be circumstances in which the principal debtor should be called for his interest.*]

The claim of the pursuer is—

For payment by the defender to the pursuer of £ , or such less sum as may be ascertained to be the value of the subjects arrested by the pursuer in the hands of the defender on 19 , on the dependence of an action at the pursuer's instance against E. F. [*designation*] for £18, 5s. and expenses, which, in breach of said arrestment, the defender illegally handed over to the said E. F., or allowed him to take possession of.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , or such less sum as may be ascertained to be the value of the subjects arrested by the pursuer in the hands of the defender by said arrestment, with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. On 19 the pursuer, on the dependence of an action by him against E. F. [*designation*] for the sum of £18, 5s. and expenses, arrested in the hands of the defender all sums of money, goods, gear, and moveable effects due and belonging to the said E. F. in the hands of the defender, conform to execution of arrestment herewith produced and referred to.

2. At the date of the said arrestment the pursuer believes and avers that there were in the hands of the defender a number of articles of furniture which belonged to the said E. F., who is a brother-in-law of the defender. In particular, there were in the defender's house a cottage piano, and in a store belonging to him or under his control a number of other articles of furniture, which, as well as the piano, then belonged to the said E. F.

3. During the dependence of the said action, and subsequent to the said arrestment, the defender, illegally and in breach of the said arrestments, handed over to the said E. F., or allowed the said E. F. to take possession of, the said piano and other articles of furniture, and to convey the same to a saleroom, where they were disposed of by public roup or otherwise.

4. On 19 the pursuer obtained decree in the said action against E. F. for the sum of £ , with £ of expenses, conform to extract decree herewith produced. On 19 the pursuer received a letter from the defender, stating that " with reference

to your arrestment on the action you *v.* E. F., nothing has been arrested in my hands by the same"; and although the pursuer has repeatedly written to the defender for information as to the disposal of the said subjects, he declines to give any information, or to admit that he ever had in his possession any goods or effects belonging to the said E. F.

5. The pursuer is unable to give details of the whole of the subjects covered by his arrestments, or to condescend upon their exact value, but he believes and avers that they included a piano, a dining-table and dining-room suite, several carpets, and a number of pictures and engravings of value, and that their total value was more than sufficient to pay the whole sums due by the said E. F. to the pursuer under the said decree.

PLEA IN LAW.

The defender having, in breach of the pursuer's arrestment, parted with the subjects thereby arrested, is liable to make good to the pursuer the loss thereby occasioned to him.

4. Assault.

NOTE.—*Besides being a criminal act, assault gives rise to a civil action for reparation for the injury done. Assault may be either actual or technical,* i.e. *the person need not be physically hurt, if there is reasonable belief that the violence threatened may and can be carried out,* e.g. *riding at foot passenger, throwing missiles or water, pointing firearms, are all assaults, but that they were only threatened will affect the amount of damages. Illegal corporeal examination is assault, if not consented to. There must be intention to injure or scare. Injuries unintentionally caused may ground an action for negligence, but not for assault, but a person injured by a blow intended for another may sue for assault.*

(*Instance as in No. 3, supra.*)

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as damages sustained by pursuer in consequence of defender having, on 19 , at the Agricultural Show held at , committed an unprovoked assault on pursuer.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and expenses.

Condescendence.

1. *Design the parties, adding any particulars which tend to show aggravation, e.g.* The pursuer is a sheep-farmer at , and is well known through the country as a breeder of prize stock. He is frequently employed as arbiter in valuing sheep stock, and occasionally acts as judge at shows. The defender is a farmer at , and was an exhibitor of stock at the agricultural show held at on 19 , at which the pursuer was one of the judges.

2. *Narrate the circumstances of assault and show "no provocation," e.g.* After the prizes had been awarded, the defender accosted the pursuer in the showyard, and in presence of many farmers and others in the district, and in particular of E. F., G. H., &c. [*designations*], accused the pursuer of acting partially and unfairly in judging certain classes of stock in which defender was an exhibitor, and thereupon, and without any provocation from the pursuer, the defender raised a stick he was carrying and struck the pursuer a violent blow therewith upon the head.

3. *Narrate the injuries sustained, e.g.* The pursuer was severely cut on the head and face by the said blow, and bled profusely from the wounds thereby caused. He was assisted by bystanders into a tent, where he was attended to by a medical man. The pursuer was thereafter driven home, and was confined to his house for days. He has received a severe shock to his system, and still feels the effects of the blow, and suffers pain in the head.

4. *Specify loss sustained, e.g.* The pursuer has been unable, in consequence of the assault, to attend to his business, and has thereby, &c. [*state loss incurred*]. He has also incurred outlays for medical attendance and [*specify any other outlay*]. The solatium which the pursuer is entitled to for said unprovoked assault, together with said loss and outlay, are moderately estimated at the sum sued for.

5. The pursuer has applied to the defender for an apology and compensation for the said assault, but these have been refused, and the present action has thus been rendered necessary.

Pleas in Law.

1. The pursuer having been assaulted by the defender, is entitled to reparation from him therefor.

2. The pursuer having suffered loss, injury, and damage through the assault on him by the defender, is entitled to reparation therefor, with expenses, as craved.

5. Carriage.

(1) Cargo (Short Delivery of).

(*See Smith & Co.*, 23 *R.* (*H. L.*) 1.)

Sheriffdom of at .

A. B. & Co., commission agents, 149 R. Street, , *Pursuers*,

against

The s.s. *Acanthus* Company, Limited, carrying on business at 22 X. Street, , *Defenders.*

The claim of the pursuers is—

For payment by the defenders to the pursuers of £ , the value of fifteen bales of jute, estimated at the market rates current in at the time of the discharge of the said ship, shipped by pursuers' agents at on 19 on board said ship for transit to , conform to bill of lading signed by the master of said ship, herewith produced, and short delivered at to the pursuers by the defenders.

Therefore the pursuers crave the Court—

To grant a decree against the defenders for payment to the pursuers of £ , with interest from the date of citation, and expenses.

Condescendence.

1. The pursuers are commission agents in , and the defenders are the owners of the steamship *Acanthus* of . Their registered office is at 22 X. Street there.

2. On 19 the pursuers' agent in shipped on board the said s.s. *Acanthus*, for transit to , 600 bales of jute, conform to bill of lading signed by the master, herewith produced and referred to.

3. On 19 the said ship discharged her cargo at , but it was found to contain only 585 bales instead of 600 as acknowledged in the bill of lading. No explanation has been given for the shortage of fifteen bales, although the pursuers at once drew the master's attention to it.

4. The value of the fifteen bales short delivered at the market rates current in at the time of the ship's discharge is £ , being the sum sued for.

Plea in Law.

The defenders having failed to deliver to the pursuers the full quantity of jute shipped on board their vessel as condescended on, are liable to the pursuers in the value of the quantity short delivered.

(2) Against Railway Company for Delay in Transit.

Sheriffdom of at .

A. & J. B., cattle dealers, B., *Pursuers*,

against

The N. H. Railway Company [*address*], *Defenders*.

The claim of the pursuers is—

For payment by the defenders to the pursuers of £ , as loss and damages sustained by the pursuers in consequence of the breach of contract of defenders' agent at B. in failing to timeously deliver sheep at P., which sheep were entrusted to him at B. by the pursuers on 19 , on an undertaking by him that they would be delivered at P. on the following day, not later than A.M., and in time for Messrs. M. & Co.'s sale, and which were not delivered in P. till P.M., two hours after the conclusion of said sale.

Therefore the pursuers crave the Court—

To grant a decree against the defenders for payment to the pursuers of £ , with interest from the date of citation, and expenses.

Condescendence.

1. The pursuers are cattle dealers, and a large part of their business consists of the purchase of sheep and cattle from farmers and others, which they transmit to the large cattle marts for sale. The defenders, the N. H. Railway Company, have an office at , and carry on business in P.

2. On 19 the pursuers delivered to the defenders' agent at B. sheep for carriage to P. When handing them over, the pursuers stated to the defenders' said agent that the sheep were intended for sale at Messrs. M. & Co.'s sale at P. on 19 , and must be delivered in P. not later than A.M. on that date. This the defenders' said agent undertook would be done.

3. The train with the said sheep left B. about o'clock on the said 19 , and should in ordinary course have arrived at P. about o'clock the next day in ample time for the said sale. They did not, however, arrive in P. until P.M., two hours after the conclusion of the sale.

4. In consequence of their failure to reach P. in time for the said sale, the sheep had to be kept in grass parks at P. until Messrs. M. & Co.'s next sale on 19 , when they were sold at an average per head of . This price was at least less than was got for the same class of sheep at the previous sale.

5. Through the defenders' breach of their contract of carriage with the pursuers the pursuers have thus lost—(1) the sum paid for grazing, £ , and (2) the difference between per head, the price received for similar sheep at the sale on 19 , and per head actually received by the pursuers for their sheep on 19 , which at a sheep amounts to £ . These two sums amount together to £ , which is the sum sued for.

6. The pursuers have applied to the defenders for payment of the said damages incurred by them through defenders' fault, but the defenders refuse or delay to pay the same, and this action is therefore necessary.

PLEA IN LAW.

The pursuers having suffered loss and damage through the defenders' failure to implement their contract of carriage as condescended on, are entitled to reparation therefor as craved.

(3) INJURY IN TRANSIT.

(*Instance as in previous Form.*)

The claim of the pursuers is—

For payment by the defenders to the pursuers of £ , as loss and damages sustained by the pursuers in consequence of injuries to a machine delivered by the pursuers to the defenders at M., on 19 , for conveyance to pursuers' warehouse at S., which injuries were sustained during the transit of said machine on defenders' railway from M. to S., owing to defenders' carelessness and negligence, or of those for whom they are responsible, and of which pursuers on , owing to said injuries, refused to take delivery.

Therefore the pursuers crave the Court—

To grant a decree against the defenders for payment to the pursuers of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. On 19 the pursuers delivered to the defenders at their station at M. a machine for conveyance to the pursuers' warehouse at S. When delivered to the defenders the said machine was in perfect condition, having just been tested before leaving the pursuers' works at M., and was properly and securely packed.

2. On 19 the defenders tendered delivery of the said

machine at the pursuers' warehouse, but as on examination it was found to have sustained serious injury in transit [*give details of injuries*], the pursuers refused to take delivery of it.

3. On 19 a representative of the defenders called at the pursuers' warehouse in S., and after examining the said machine offered on behalf of the defenders to bear the cost of repairing the [*give details*]. The pursuers at once declined to accept this offer, and intimated that it would be necessary that the whole of the [*give details*] of the machine should be removed, and new parts substituted for them. To these terms the defenders declined to accede.

4. The cost of renewing the parts above stated would not be less than the sum sued for, viz. £ .

PLEA IN LAW.

The said machine having been injured while in the defenders' custody as condescended on, the pursuers are entitled to recover from the defenders the loss thereby caused to them.

6. Contract (Breach of).

NOTE.—*The provisions of sec.* 6 (*b*) *of the Sheriff Courts Act of* 1907 *will be kept in view, by virtue of which a defender may be sued* ratione contractus *in the jurisdiction in which the contract was constituted.*

Sheriffdom of at .

A. B. & Co. [*designation*], *Pursuers,*

against

C. D. & Co. [*designation*], *Defenders.*

The claim of the pursuers is—

For payment by the defenders to the pursuers of £ , as loss and damages sustained by the pursuers in consequence of defenders' breach of contract, constituted by letters of offer and acceptance respectively between pursuers and defenders dated and 19 , whereby defenders agreed to furnish, and pursuers agreed to accept, for shipment to , per s.s. *Greenoak* from on 19 , the tools and other material specified in said letters, and of which only a small proportion has been shipped by defenders to .

Therefore the pursuers crave the Court—

To grant a decree against the defenders for payment to the pursuers

of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The pursuers are African merchants, and carry on business in and at several places in South and East Africa. The defenders are manufacturers of miners' tools and machinery in .

2. In the month of 19 the pursuers received a telegram from their agents in Y. that gold had been found in the neighbourhood, and that there was a great rush of prospectors to the place, and suggesting that the pursuers should at once forward a large quantity of miners' tools, implements, and mining machinery. The pursuers at once entered into communication with the defenders, and by letters, dated and 19 , the defenders agreed to furnish to the pursuers, for shipment on board the s.s. *Greenoak*, to sail from on 19 , the tools, &c., detailed in the list furnished to them by the pursuers at the rates mentioned in their said letters. The said letters and a copy of the said list are herewith produced.

3. The pursuers advised their agents in Y. that the goods in question would be forwarded per s.s. *Greenoak*, which was due to arrive on or about 19 , and they in anticipation thereof erected a large store, engaged salesmen and others, and arranged for transport to the goldfields, so as to be in a position to do a large business immediately on the arrival of the goods. The pursuers also arranged with the owners of the *Greenoak* for the freight of the goods by that steamer.

4. On 19 the pursuers wrote the defenders stating that they hoped the goods would be sent forward in ample time for shipment. No reply was received to this letter, and on 19 the pursuers received from the owners of the *Greenoak* a telegram that they had heard no word of the goods in question, and urging that they be forwarded at once. The pursuers at once wired to the defenders, but received an answer that they could only forward the following, viz. [*give details, and narrate any further correspondence*].

5. The pursuers made every effort to obtain similar goods in this country, but could only obtain [*give details*], for which they had to pay prices greatly in excess of those contracted for by the defenders, and which were only sent from on 19 . No similar goods could be purchased in .

6. [*Give details of when several lots arrived in ; the loss sustained, viz.* (*freight, wages, outlays, and loss of business, &c.*). *In the case figured consequential damages would, it is thought, be allowed—see Duff & Co.*, 19 *R.* 199.]

7. The pursuers have applied to the defenders for payment of the loss so sustained through their breach of contract, but they delay or refuse to pay the same, and this action is therefore necessary.

PLEAS IN LAW.

1. The defenders having failed to implement their contract with the pursuers as condescended on, are liable to them in damages therefor.

2. The pursuers having incurred expenses and suffered loss [including special damage as condescended on] through the defenders' breach of contract, are entitled to reparation therefor as craved.

FOR DAMAGES AGAINST SHIPOWNER FOR FAILURE TO IMPLEMENT CHARTER-PARTY.

(*Locus solutionis* within jurisdiction.—*See* SHERIFF COURTS ACT, 1907, sec. 6 (*d*).)

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D., , X. Street, , master and part owner, and as such representing the other owners, of the ship *Ann* of , *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as damages sustained and costs and damages incurred by the pursuer in consequence of defender's failure to implement the charter-party entered into between him and the pursuer on 19 , whereby said ship was chartered to pursuer to proceed on a voyage from with a cargo of oats to on or before 1st August 19 , and which was not ready to sail before the 10th of August.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. By charter-party dated 20th July 19 , entered into between the pursuer on the one part and the defender for himself and the other owners of the ship *Ann* of , the defender chartered to the pursuer the said ship to proceed on a voyage from with a cargo of oats to , in , and having discharged said cargo at

, there to take on board said ship such cargo as might be provided for her by pursuer's agents there, and after loading to return to , and there to discharge the said homeward cargo, and that for the freight and other considerations stipulated by the said charter-party; and particularly the defender thereby bound and obliged himself and the owners of said vessel to have his aforesaid vessel, the *Ann*, in the aforesaid port of , in a completely seaworthy state, fully equipped with a sufficient crew, properly victualled, and provided with everything necessary for the accomplishing of the said intended voyage, and that on or before the 1st August 19 , so as she might proceed on said voyage with the first fair wind thereafter, and both parties became bound to perform their respective parts of the said contract under the penalty of £50, to be paid by the party failing to the party observing or willing to observe his part of the same, over and above performance.

2. The pursuer had accordingly prepared and had in readiness the foresaid outward cargo to be shipped on board of said vessel, and was ready to have shipped the same on said 1st August 19 , had the said vessel been in readiness to receive it. At this time the wind was, and for some time thereafter continued to be, fair for proceeding on said voyage, but the defender entirely failed in the fulfilment of his part of said contract, in so far as said vessel was not in readiness or in a sufficiently seaworthy state, manned, victualled, and prepared to receive the said cargo on board, and to sail therewith, until 10th August 19 , by which time the wind had become adverse for proceeding on said voyage, and the cargo had become deteriorated or depreciated in value, a great fall having in the interim taken place in the price of oats. In consequence of this the merchant at who had ordered the said cargo of oats intimated to the pursuer that he declined to receive the said cargo.

3. The damages, costs, and charges incurred and sustained by the pursuer through the aforesaid breach of contract on the part of the defender amount to the sum of £ sterling, conform to an account thereof produced.

4. The pursuer has required the defender to pay the said sum, but he refuses or delays to do so.

Pleas in Law.

1. The pursuer, having incurred loss and damage through defender's breach of his said contract, is entitled to reparation therefor as craved.

2. The sum sued for being moderate and reasonable, decree therefor, with expenses, should be granted as craved.

7. Copyright (Infringement of).

See also INFRINGEMENT; *from the style there given the instance, claim, and crave may be adapted, the following being given as an additional*

CONDESCENDENCE.

1. The pursuers are the publishers and owners of the copyright of a work known as " ." Their copyright of the said work is duly registered.

2. In or about the month of 19 the defenders published a work called "Tables and Rules for the Use of ." The said tables and rules were mere copies with slight verbal modifications of the tables and rules on pp. to and to of the pursuers' said work, and are an infringement of the pursuers' copyright therein.

3. The defenders' said book has had, as the pursuers believe and aver, a very large sale both in Great Britain and the colonies, and has seriously affected the sale of the pursuers' work. Immediately on the publication of the defenders' said work, the pursuers pointed out to them that it was an infringement of their copyright, and required the defenders to withdraw it from the market, but this they refuse to do, and the present action is therefore necessary.

PLEA IN LAW.

The defenders having infringed the pursuers' copyright as condescended on, the pursuers are entitled to damages as craved.

8. Harbour.

(1) INJURY TO QUAY.

(*See* HARBOUR, No. 1.)

(2) INJURY TO VESSEL THROUGH DEFECTIVE HARBOUR.

(*See* HARBOUR, No. 2.)

9. Landlord and Tenant.

(1) DISREPAIR OF PREMISES.

Sheriffdom of at .

A. B. [*designation*], tenant of the house, No. 10 R. Place, of which the defender is proprietor, *Pursuer*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender to pursuer of £ as loss and damages sustained by the pursuer in consequence of defender's negligence and wilful failure to maintain said house in good and tenantable condition, as a result of which part of the house was, on 19 , flooded and the furniture seriously damaged, and pursuer had to leave and obtain lodgings elsewhere for a fortnight, while the necessary repairs were being executed.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The pursuer was tenant of the house, No. 10 R. Place, , of which the defender is the proprietor, under missives of let, dated 19 , for the year from Whitsunday 19 to Whitsunday 19 , at the annual rent of £ .

2. Shortly after the pursuer obtained possession of the said house he noticed a mark on the ceiling of the drawing-room, apparently caused by some leakage or overflow of water from the cistern, which is situated above that room. As it showed no signs of drying up, he, on 19 , wrote to the defender asking him to have it attended to. To this note he received no reply, and he again wrote to the defender on 19 , urging his immediate attention. As the result of this the defender sent a man on or about 19 , who inspected the place, and left saying he would send some person to put it right. During the week following the said call, however, no person was sent to repair the leakage.

3. On the afternoon of Saturday, the 19 , the pursuer and his wife shut up the said house, and went to the country for the week end, the servant also being allowed to go home. On their return on the forenoon of the following Monday they found that during their absence a pipe had burst where the leakage had formerly shown itself, and the drawing-room and part of a bedroom adjoining and the lobby had been flooded, and the furniture and other contents seriously damaged. [*Give shortly details of principal damage.*] The pursuer at once sent for a plumber, who shut off the water.

4. On examining the pipes it was found that one of them had given way near the cistern indicated by the leakage, and where was the cause of the flooding. Had the pursuer's repeated warnings been

attended to by the defender, the injury could not have occurred. In consequence of the condition of the said house, the walls, ceilings, &c., of which are not even yet dried, the pursuer found it necessary to go into lodgings for a fortnight, while the necessary repairs (which included taking down the whole ceiling of the drawing-room) were being executed.

5. Through the defender's wilful failure to maintain the said house in a good and tenantable condition the pursuer has suffered loss to at least the extent sued for. [*Give details.*] The defender denies that he is liable for the said loss or any part of it, and this action is thus necessary.

Pleas in Law.

1. The defender having, in breach of the contract of let entered into with the pursuer, failed to keep the said house in repair as condescended on, is liable in damages to the pursuer for the loss thereby occasioned to him.

2. The pursuer having suffered loss to the extent sued for through the defender's failure to carry out the necessary repairs on the house occupied by the pursuer as condescended on, the pursuer is entitled to reparation for the loss thereby caused to him.

(2) Defective Drains.

Sheriffdom of at .

A. B. [*designation*], tenant of No. M. Crescent, , of which defender is proprietor, *Pursuer*,

against

C. D. [*designation*], *Defender.*

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as loss and damages sustained by the pursuer in consequence of defender's fault and negligence in failing, after notice by pursuer, to efficiently remedy the defective system of drainage in said house, and in particular to connect the soil-pipe from the bath-room water-closet with the main drain, as a result of which pursuer contracted typhoid fever, and on October 19 had to be removed to hospital, where he remained weeks, and his family had to remove to lodgings.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer

of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The defender is the proprietor of the villa, No. M. Crescent, . The pursuer is tenant of the said house, under lease, dated 19 , for five years from Whitsunday 19 , herewith produced.

2. In the beginning of 19 the pursuer perceived occasionally a noxious smell in the bedroom occupied by him in the said house, which is on the ground floor, and adjoins the pantry. He wrote to the defender, who sent workmen, who examined the pipes in the pantry, and, it is believed, executed certain repairs thereon.

3. Having still cause to complain of the smell, the pursuer again wrote to the defender requesting him to have it remedied, in response to which the defender, who is a joiner, himself called, and inspected the said bedroom and pantry, and thereafter wrote to the pursuer that the smell was the result of the defects remedied by the workmen, and would soon pass away. In or about the of October 19 the pursuer was taken ill of typhoid fever, and was removed to the hospital, where he remained until 19 .

4. Immediately after the pursuer's removal to the hospital the sanitary authorities caused the drains of the said house to be inspected, when it was found that the soil-pipe from the bathroom water-closet had not been properly connected to the drains, the joint which was beneath the floor of the pantry adjoining the pursuer's bedroom having been merely filled with clay. The inspection also discovered several other defective joints in the drains beneath the said house. A copy of the report of the sanitary inspector is herewith produced. During the repairs on the said drains, which necessitated the lifting of a great part of the flooring, &c., on the ground floor, the pursuer's family had to remove to lodgings.

5. The pursuer's said illness was, as the pursuer believes and avers, caused by the defects in the drainage of the said house. During the whole period while the pursuer was in hospital, and subsequently by the advice of his doctor at the seaside—extending in all to over weeks—he was unable to give personal attention to his business, which in consequence suffered severely. He also incurred expenses for the removal of his family from the house, and for his and their lodgings, amounting to £ , and doctors' bills for £ . He also during his illness suffered great pain and weakness, and still is and will continue for some considerable time to be weak through the

effect of the said illness. The sum sued for is a moderate estimate of the loss, injury, and damage suffered by the pursuer through the said defective drains.

6. The pursuer has applied to the defender for reparation for the loss and injury so caused to him, but the defender denies all liability, and the present action is thus necessary.

Plea in Law.

The pursuer having suffered damage through the fault and negligence of the defender, the latter is liable to the pursuer in reparation therefor.

(3) Injury by Game.

Sheriffdom of at .

A. B. [*designation*], tenant of the farm of X., on defender's estate of Y., in the parish of Z. and county of ZZ., *Pursuer*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as loss and damages sustained by pursuer in consequence of defender's failure, in terms of the lease of said farm dated , to keep the stock of rabbits in the coverts adjoining said farm within reasonable limits.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ with interest from the date of citation, and expenses.

Condescendence.

1. The pursuer is tenant of the farm of X., on the defender's estate of Y. in the county of , under lease dated , herewith produced.

2. By the said lease it is provided that [*quote any provisions relevant to the action*].

3. Since the beginning of 19 the pursuer has repeatedly complained to the defender's factor, Mr. R. S., of the excessive stock of game and rabbits kept in the coverts adjoining his said farm, and which, in terms of the said lease, the defender was bound to keep down to a reasonable amount. A copy of the pursuer's correspondence with the defender's factor is herewith produced and referred to.

4. [*Give reason why game cannot be kept down*, e.g. *extensive coverts.*]

5. [*Give details of damage to crops, stating amount separately for each.*]

6. The defender refuses to admit his liability for the said damage, or to pay anything in respect thereof to the pursuer, and this action is thus necessary.

PLEA IN LAW.

The defender being bound in terms of his lease to keep down the game on the pursuer's farm and in the coverts adjoining the same, and having failed to do so, the pursuer is entitled to reparation for the damage caused by such failure.

(4) SEQUESTRATION FOR RENT, BREACH OF.

This is best met by petition and complaint, infra, SEQUESTRATION.

10. Master and Servant.

(1) DISMISSAL (WRONGFUL).

See also MASTER AND SERVANT, No. 3, *the instance, claim, and crave of which may be used, the following being given as an additional*

CONDESCENDENCE.

1. The defender is an advertising contractor with an extensive business all over the United Kingdom. He, *inter alia*, designs, supplies, and issues advertisements for private traders.

2. The pursuer is a designer of advertisements and posters, and was for many years employed in that capacity in Chicago and other places in the United States.

3. In June 19 the pursuer, while on a visit to this country, was introduced to the defender. As the result of several meetings, the defender, on or about 19 , engaged the pursuer to manage the practical part of defender's business, at a salary of £ per annum, with a commission of per cent. on all drawings over £ per annum, the engagement to endure for at least three years. The pursuer was to be allowed an entirely free hand in the conduct of his branch of the business. The pursuer accepted defender's offer.

4. In reliance on the said engagement the pursuer resigned the several agencies held by him in the United States, and on 19 entered upon his duties with defender. Very soon thereafter the defender commenced to interfere with the pursuer's conduct of the practical part of the business. In several instances the defender refused

to adopt contracts made by the pursuer, in particular [*give instances*]. The whole of these contracts would have been remunerative business.

5. On or about [*date*] the defender, in his office at Street, , without any justification or warning, dismissed the pursuer, and offered him a cheque for £ , being the amount of one month's salary then due, in settlement of all his claims, which the pursuer refused.

6. During the six months the pursuer was in defender's service the turnover of defender's business amounted to not less than £ , and the pursuer's commission for that period, at the agreed-on rate, amounts to £ . The defender refuses to pay the pursuer any commission. The pursuer further believes and avers that if he had been allowed to continue to conduct the business the turnover would have increased greatly before the end of the three years. But even on the basis of the first six months, the commission for the three years would have amounted to £ . His salary for three years, less the salary for five months, which he has received, amounts to £ . The defender refuses to pay the pursuer any salary beyond the amount for one month, which pursuer refused as aforesaid.

7. In consequence of defender's wrongful dismissal of the pursuer, the latter has suffered serious loss, injury, and damage. He has no business connection in this country, and has severed all his former connections in America. His business prospects for some years to come are therefore practically spoilt. He has also incurred heavy expenses in bringing his family and effects from America. The pursuer estimates that the loss, injury, and damage which he has suffered through the fault of the defender will amount to £ , being the sum sued for.

PLEAS IN LAW.

1. The pursuer having been dismissed by the defender from his service wrongfully and without justifiable cause, is entitled to reparation from the defender therefor.

2. The defender having refused or failed to fulfil his engagement to the pursuer as condescended on, is liable in damages to the pursuer.

(2) INJURY TO SERVANT.

Action laid alternatively at common law or under the Employers' Liability Act.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of—(1) £ as damages sustained by pursuer at common law, in consequence of defender's negligence in ordering or allowing pursuer to use a scaffold in connection with certain alterations which were being effected by defender on the roof of the church, No. Street, , which was, as defender knew, or ought to have known, insufficient for the use to which it was put and defective in construction, and which collapsed on account of its defective construction; *or alternatively*—(2) £ as compensation under the Employers' Liability Act, 1880, in respect that said defective scaffold was part of defender's plant, and that pursuer was ordered to use it by E. F. the defender's foreman in charge of said work, who was a superintendent in the sense of the Act.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , *or alternatively* of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The pursuer is a labourer, and at the time he sustained the injuries aftermentioned was in the employment of the defender, who is a building contractor carrying on business at .

2. During the month of 19 the defender was making alterations on the roof of a church, No. Street, . To enable him to execute said alterations, he erected or caused to be erected scaffolding in the interior of said church at a height of about feet from the floor. It consisted of [*describe its construction, pointing out any defects*].

3. On the morning of 19 , when pursuer started to work, he was ordered by the defender [*or* by E. F., the foreman employed by the defender to superintend said work] to carry certain materials to the workmen on the platform. While on the platform delivering a load, the whole scaffolding at the west end of the church collapsed without any warning, and the pursuer was precipitated to the ground, a distance of over feet.

4. In consequence of his fall from the said scaffolding, the pursuer was very seriously injured. He sustained compound fractures of both legs, and serious internal injury, and also injury to his spine. He has been since the accident, and is still, in the Infirmary, and it is not expected that he will ever be able to work again. The injuries

to the pursuer were caused by the fault of the defender or those for whom he is responsible, in ordering or allowing the pursuer to use a scaffolding which he knew or ought to have known was insufficient for the use to which it was put, and was defective in construction, and collapsed on account of its defective construction.

5. The collapse of the said scaffolding was due to its defective construction, for which the defender is responsible. In particular, it was defective in [*give details*]. The whole of said defects were known to or might have been discovered by the defender had he made any reasonable examination of the scaffolding before allowing it to be used. The defender made no inspection, or at all events no sufficient inspection, of the scaffolding in question before it was used. The pursuer was not engaged in the erection of the said scaffolding, and knew nothing about its construction, and relied, as he was entitled to do, upon the defender providing safe scaffolding.

6. The said defects in the material and construction of said scaffolding constituted defects in the condition of the plant used in the business of the defender within the meaning of the Employers' Liability Act, 1880, and the pursuer's injuries were caused by the fault and negligence of the defender or of the said E. F., his foreman, or of some other person in his employment who was intrusted by him with the superintendence of the work on which the pursuer was engaged at the time and place when the pursuer sustained the injuries as aforesaid, for the reasons or some one or other of the reasons above stated.

7. The pursuer caused notice to be sent to the defender on or about [*date*], stating the injuries that he had sustained, and the date when they were sustained, in terms of said Act. At said date the pursuer was earning wages at the rate of shillings per week. The estimated earnings during the three years preceding the injury of a person in the like employment and in the district in which the pursuer was employed at the time of the injury amount to £ , being the sum claimed alternatively in the prayer of the petition. At common law the pursuer claims £ as a reasonable amount of compensation and solatium for the injuries he has received. The defender has refused to compensate the pursuer for said injuries, and the present action has therefore been rendered necessary.

Pleas in Law.

1. The pursuer, having been injured in his person through the fault or negligence of the defender, is entitled to reparation therefor.

2. The pursuer having been injured in his person through the negligence of the defender in using defective plant, or in failing to

see that safe and proper plant was provided, is entitled to reparation from the defender therefor.

[3. Or otherwise, the pursuer having been injured in his person through the negligence of the defender or of a person in his employment for whom he is responsible under the Employers' Liability Act, 1880, is entitled to reparation from the defender therefor.]

11. Patent (Infringement of).

(*See also* INFRINGEMENT, No. 3.)

Sheriffdom of at .

A. B. & Sons, cycle manufacturers, , *Pursuers*,

against

C. D. & Co., cycle manufacturers, , *Defenders*.

The claim of the pursuers is—

For payment by the defenders to the pursuers of £ as loss and damages sustained by the pursuers in consequence of defenders having, in breach of the interdict against them obtained in this Court on 19 , interdicting them from infringing the letters patent, No. , of 19 , granted to the pursuers for improvements in cycles, manufactured and sold in the United Kingdom, between the date of said interdict and 19 , large quantities of cycles made in accordance with pursuers' said invention.

Therefore the pursuers crave the Court—

To grant a decree against the defenders for payment to the pursuers of £ , with interest from the date of citation, and expenses [and to grant warrant, &c.].

CONDESCENDENCE.

1. On 19 the pursuers obtained decree in the Sheriff Court of at , interdicting the defenders from infringing [*&c. as in the decree*] the letters patent, No. , of 19 , granted to the pursuers for improvements in cycles, from manufacturing, selling, importing, or exposing for sale cycles made in accordance with the inventions described in the specifications filed relative to said letters patent, or from otherwise infringing the rights and privileges granted by said letters patent. In the said action the pursuers reserved their claim for damages for past infringement by the defenders.

2. The defenders infringed the rights and privileges conferred by the

said letters patent between 19 and the date of the said interdict by manufacturing and selling in the United Kingdom large quantities of cycles made in accordance with the invention described therein, or in imitation thereof. The selling of said cycles has been carried on by the defenders not only in their premises at , but also all over the country by means of travellers, and at prices below those usually obtained by the pursuers.

3. Through the defenders' unfair and illegal manufacture and sale of cycles infringing the pursuers' letters patent, the pursuers' business has been seriously injured. To meet the illegal competition of the defenders, the pursuers have been forced to reduce their prices; they have thus both lost the sale of the cycles which they would have sold but which have been purchased from the defenders, and have also lost the profit they would have made on their own sales.

4. The pursuers applied to the defenders, after said decree of interdict, for reparation for the infringement of their rights under the said letters patent, but the defenders maintain that their said acts have caused the pursuers no damage, and the present action has thus been rendered necessary. The loss, injury and damage which has been and will be caused to the pursuers in consequence of defenders' said illegal acts is moderately estimated at the sum sued for.

PLEA IN LAW.

The defenders having infringed the said letters patent in favour of the pursuers, and thereby caused loss, injury and damage to the pursuers, are liable in reparation to the pursuers therefor.

12. Personal Injury.

(1) FOR BITE OF A DOG.

NOTE.—*Owners of dangerous animals must so control them as to prevent their doing injury. Wild animals are presumed dangerous, and their owner is always responsible for injury caused by them. But domesticated animals are presumed harmless, and in order to render their owner liable, knowledge of previous vicious acts must be averred and proved, except in the cases provided for by* 26 & 27 *Vict. c.* 100. *That the animal was on the owner's private premises is no defence if the person injured did not go on the premises illegally, or in defiance of an explicit warning of his danger.*

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as damages for personal injury and loss occasioned to pursuer by the bite or bites of a bull-dog belonging to defender, and known by him to be vicious, which attacked pursuer on 19 , while he was working in the grounds of defender's said villa.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The pursuer is fifty-eight years of age, and is a jobbing gardener in the employment of Messrs , gardeners and florists, . The defender is a retired merchant, and resides at Road, .

2. On 19 the pursuer was sent by his employers to do certain work in the garden attached to the defender's said house. In the afternoon of the said , about o'clock, while engaged planting flowers in a bed in front of the house, he was suddenly attacked by a large bull-dog belonging to the defender. The said dog came up behind the pursuer, and, before he was aware of its presence, bit him severely on the left leg. The pursuer tried to keep the dog off with a trowel which he had in his hand, but notwithstanding his efforts the dog succeeded in biting him again on the left wrist. For several minutes the dog continued its attack on the defender, until the defender's groom appeared in answer to pursuer's cries and secured the dog.

3. After having the wounds caused by the dog's teeth bound up at the defender's house, the pursuer went to the Royal Hospital, where his injuries were cauterised and dressed, and from which, by the surgeon's orders, he was conveyed home in a cab. In consequence of the said wounds, the pursuer was confined to bed for weeks, and he has not yet been able to resume his ordinary work.

4. The injuries sustained by the pursuer were very extensive, and he has suffered, and still suffers, severe pain from them. In addition to which, the unexpected and savage nature of the attack caused a severe nervous shock, from which he has not yet recovered. He is not yet fit to resume work, and, as the doctors inform him, will not for a very long time be able for any but light work. Besides the loss of wages thus occasioned, he has incurred a heavy bill for the attendance of doctors and for medicines. The loss, injury and damage suffered by the pursuer amount to at least the sum sued for.

5. The said dog was known to the defender to be vicious, having bitten several persons before its attack on the pursuer. In particular, on [*date*] it attacked and bit a boy, F. G. [*designation*], while he was delivering parcels at defender's house. And on or about [*date*], at or near [*place*], it bit or otherwise injured H. L. [*designation*]. The defender knew of the dog having attacked and injured said persons and others. The pursuer's said injuries were due to the fault of the defender in not having said dog properly secured in such a manner as to prevent it attacking strangers who were, as pursuer was, lawfully on defender's premises, and the defender is therefore liable to the pursuer for the loss, injury and damage sustained by him as aforesaid.

6. The pursuer has applied to the defender for reparation for said injuries, loss and damage, but the defender has refused him any compensation, and the present action has thus been rendered necessary.

Plea in Law.

The pursuer having suffered injury, loss and damage through the fault of the defender, in allowing a dog belonging to him, and known to be vicious, to be at large and to attack and injure the pursuer, he is entitled to reparation therefor from defender.

(2) For Injury in Railway Accident.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

The Caledonian Railway Company, 302 Street, ,
Defenders.

The claim of the pursuer is—

For payment by the defenders to pursuer of £ , as loss and damages sustained by pursuer in consequence of defenders' train, timed to leave X. at 4.25 P.M. for Y., by which pursuer was a passenger, having violently come into collision with the stop-buffers at the end of the platform at Y., whereby pursuer was, owing to the fault and negligence of defenders, very severely injured, suffered extensive shock, and has become incapacitated from earning his livelihood.

Therefore the pursuer craves the Court—

To grant a decree against the defenders for payment to the pursuer of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The pursuer is a commercial traveller, and on 19 was a third-class passenger by the defenders' train, timed to leave X. at 4.25 P.M. for Y. He had purchased from defenders, and was in possession of, a third-class ticket from X. to Y. on the date in question, and the defenders had thereby contracted with pursuer to convey him safely from X. to Y.

2. The said train by which pursuer travelled reached Y. about eight o'clock in the evening of said [*date*]. In approaching the station at Y., which is a terminus, the train was not pulled up in time, and came into violent collision with the stop-buffers at the inner end of the platform. By the force of the collision the engine and tender were thrown on to the platform, several of the carriages were telescoped into one another, and the whole train damaged. In consequence of the collision several passengers in the train were killed, and many others, including the pursuer, were injured.

3. The pursuer was severely cut about the head and face, and also sustained serious internal injuries and a great shock to his nervous system. He has been confined to the house for two months through the injuries then received, and during that time he has been, and still is, under medical treatment. He still suffers great pain, and it is believed by his medical advisers that the internal injuries are permanent, and will completely incapacitate him for work of any kind in the future. Besides the personal injuries and their effect in preventing him from earning his livelihood in future, the pursuer has incurred, and will incur, heavy expenses for medical attendance and nursing.

4. The said injuries to the pursuer were caused by the fault and negligence of the defenders or those for whom they are responsible. In particular, the said accident was caused either through the culpable failure of the engine-driver of the said train to have his train under proper control while entering Y. Station, or through the faulty or defective nature or condition of the brakes or other means of controlling the speed of the train supplied by the defenders or those for whom they are responsible.

5. The pursuer has applied to the defenders for reparation for his said injuries, but they decline or delay to compensate him, and the present action is therefore necessary.

PLEA IN LAW.

The pursuer, having been injured in his person through the fault of the defenders or of those for whom they are responsible, is entitled to reparation from the defenders.

(3) For Damages against Shipowners for Personal Injury and Injury to a Horse.

Sheriffdom of at .

A. B., horsedealer, residing at No. 5 X. Street, , *Pursuer*,

against

C. D. & Co., shipowners, , owners of the s.s. *Z.* of , *Defenders.*

The claim of the pursuer is—

For payment by the defenders to pursuer of—(1) £ as damages sustained by pursuer, in consequence of defenders' fault, while embarking as a passenger on board said steamer at Pier on 19 ; and (2) £ as the value of a horse belonging to pursuer which was being embarked on board said steamer on said date, and which, owing to defenders' fault, was so seriously injured as to render it worthless.

Therefore the pursuer craves the Court—

To grant a decree against the defenders for payment to the pursuer of £ , with interest from the date of citation, and expenses.

Condescendence.

1. On 19 the pursuer was in , and had with him a horse which he had bought that day at , and which he intended to take with him to on board said steamer. The usual hour at which said steamer sailed was 8 P.M., and before that time the said steamer had reached and was lying at the Quay, a little below the Custom-House.

2. The pursuer, before embarking said horse on board the steamer, duly acquainted the defenders or those in charge on their behalf with his intention of taking the horse with him in the said steamer. The defenders thereupon made certain charges for the freight of the animal, which the pursuer at once paid.

3. When the pursuer, with his horse in charge, reached the said steamer he found a cattle gangway from the quay to the steamer at the after-hatch, but, owing to the lowness of the tide, in such a position as to make it difficult or impossible for him to get his horse to step upon it, the end of the gangway next the quay being tilted up to a considerable height above the level of the quay.

4. Before the pursuer and his horse stepped on the gangway, and with a view to enable them to do so, the defenders, or those for whom

they are responsible, caused the gangway to be brought more nearly to a level with the quay than it had been before by means of the donkey-engine, which was worked from the deck or the bridge. Thereupon the defenders, or one of their servants, led the pursuer's horse upon the said gangway, the pursuer following. When the said horse, thus led, and the pursuer had proceeded about twelve feet along the said gangway the defenders, or one of their servants, called to the man working the said donkey-engine to lower the end of the gangway which he had previously raised. This he proceeded to do, or to endeavour to do, whereupon the said gangway fell suddenly upon the deck, taking with it the pursuer and his horse. The said gangway fell, and the pursuer and his horse were, in consequence, injured through the fault of the defenders, or those for whom they are responsible. The said gangway fell through the shore end of the gangway not having been made fast, or from its having been moved in a reckless or careless manner, and so as to make the end next the quay slip away from its place on the quay, or from its having been slung or tied in such an improper manner as to make the quay end of the gangway slip down when an attempt was made to pull the deck end up, or through some other cause or causes arising from the fault, negligence, or carelessness of the defenders, and for which they are responsible.

5. The injury sustained by the pursuer was serious. When the said gangway fell he came violently against the cross beam, and his left foot was caught at the bottom of the rail. He was severely stunned, and did not come round for a considerable time. He found that one of his knees and one of his feet had been severely injured, a bone having been broken about an inch and a half above the left ankle. In consequence of these and other injuries, and from the shock to his system, the pursuer was confined to bed for ten weeks, was unable to wear a boot, and frequently suffered very great pain. Before said accident the pursuer's general health was excellent, but since then, and in consequence thereof, it has been much impaired. He has frequently found it impossible to obtain sleep, and has fallen off greatly in physical condition.

6. The pursuer's horse also sustained such injuries as to render it worthless. It was much hurt in the hind quarter, the hair being peeled off the near hough, and it has been permanently lame.

7. The pursuer has sustained loss and damage in consequence of the injuries foresaid to himself and to his horse, and he moderately estimates the same at the sum of £500. The defenders have been called on to make reparation; but, as they have refused or delayed to do so, the present action has been rendered necessary.

PLEAS IN LAW.

1. The pursuer having sustained the injuries condescended on through the fault of the defenders, he is entitled to reparation therefor as craved.

2. The sum sued for being fair and reasonable, decree should be pronounced, with expenses, as craved.

(4) RUNNING DOWN.

NOTE.—*There must be evidence of negligence,* i.e. *want of reasonable and ordinary care. The knowing use of a vicious horse or a defective carriage or harness is negligence, if the defect was or ought to have been known.*

LIGHTS.—*There is no common law or universal statutory obligation to carry lights on vehicles other than cycles and motor cars, but in very many districts, and especially burghs, lights are compulsory on all or certain classes of vehicles.*

DRIVING.—*Excessive speed raises a general presumption of negligence, varying according to circumstances. The primary obligation is on the driver to keep clear of foot passengers, and he must give warning of his approach. Foot passengers must exercise reasonable care, but there is no obligation on them to confine themselves to the footpath.*

RULE OF ROAD.—*Failure to observe this raises a presumption of negligence, unless there was a special reason for not conforming to it. The exception to the rule in the case of tramway cars should be kept in view.*

Traction engines, motor cars, and cycles are all regulated by special statutes.

Sheriffdom of at .

A. B. [*designation*], *Pursuer,*

against

C. D. [*designation*], *Defender.*

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as damages for the loss, injury and death of pursuer's daughter, E. B., which was caused by the fault and negligence of defender's servant in having, on 19th November 19 , furiously and negligently driven a horse and van round the corner from Y. Street, , to X. Street, , while on the wrong side of the road, and knocked said E. B. to the ground, whereby she was either instantaneously killed or sustained such injuries that she died immediately thereafter.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and expenses. [And to grant warrant, &c.]

CONDESCENDENCE.

1. The pursuer is a blacksmith, and resides with his wife and family at Street, . The defender is a butcher, carrying on business at Street, , and employs several horses and vans in his business.

2. On Saturday, 19th November 19 , about 10 o'clock in the forenoon, the pursuer's daughter, E. B., years of age, was proceeding westwards along X. Street, , in charge of her sister, H. B., aged , for the purpose of visiting the pursuer's mother at Street, . At the junction of X. Street and Y. Street the two children stopped until they could get an opportunity to cross over to X. Street. While standing at said corner, a horse yoked to a spring van belonging to the defender, which had come northwards along Y. Street, was driven furiously and negligently round the corner into X. Street and eastwards along X. Street. The said horse and van were being driven by a servant in the employment of the defender, named G. H.

3. In consequence of the reckless and negligent manner in which said horse and van were being driven, the right-hand wheel of the van mounted the kerb as it turned the corner where the children were standing, and the horse or van, or some part of one or other of them, struck the said E. B. as she stood on the pavement, and threw her violently to the ground. The wheel of said spring van passed over the said E. B., and she was instantaneously killed, or otherwise she sustained such serious injuries that she died within a very few minutes after the occurrence took place.

4. At the time of the accident the said van was on the wrong side of the road. If G. H. had been observing the rule of the road, as he was bound to do, the horse or van would not have come into collision with the said E. B. Further, he was not keeping a proper lookout at the time, otherwise he would have observed the said E. B. and H. B. standing on the pavement at the corner, and would have seen also that the wheel of his van would pass over the pavement at or near where they were standing. After the accident the said G. H. did not pull up, but drove rapidly eastwards along X. Street, still on the wrong side of the road, until he was stopped by a policeman.

5. The sum sued for is moderate reparation for the grief and

suffering caused to the pursuer by the sudden and violent death of his child. He has applied to the defender for payment thereof, but the defender denies liability, and the present action is therefore necessary.

PLEA IN LAW.

The pursuer having suffered loss, injury and damage through the fault and negligence of the defender, or of those for whom he is responsible, is entitled to decree as craved.

13. Poinding (Breach of).

(*See* POINDING.)

14. Promise (Breach of).

This can easily be adapted from the style given under MARRIAGE, BREACH OF PROMISE OF.

15. Property.

NOTE.—*Liability does not arise merely from the fact of ownership; there must be fault. A proprietor is bound to fence a dangerous place on his lands if the place is so near where the public have a right to be as raises reasonable apprehension that injury may result if the place is not fenced. The duty to fence lies on the person who creates the risk either in making a public place near to the existing danger, or creating the danger near to a public place. There are also statutory duties laid upon certain public bodies, such as road trustees, mining companies, railway companies, &c. The fence must be sufficient to warn persons of the danger ahead, and must be sufficiently strong to withstand such force as it may in the circumstances be expected to encounter. A proprietor is bound to prevent his property from causing injury, but mere proof of defective condition will not make him liable unless knowledge of the defect or negligent ignorance thereof is proved. Inspection is only necessary where there is reason to suspect defect.*

(1) DEFECTIVE PREMISES.

Sheriffdom of at

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as

loss and damages sustained by the pursuer in consequence of defender's fault and negligence in allowing the trap-door from the pavement to the cellar of defender's shop in Street to remain open and unguarded, whereby pursuer fell through said trap-door and sustained serious personal injuries.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and expenses.

[And to grant warrant, &c.]

CONDESCENDENCE.

1. The defender is a grocer and provision merchant, and carries on business in the shop No. Street, . Underneath the said premises, and partly below the level of the pavement, there are cellars in which the defender stores certain of his goods, and to which access is obtained from the outside by a trap-door in the pavement adjoining.

2. About eight o'clock on the evening of 19 , it being then quite dark, while the pursuer was walking past the defender's premises, he fell through said trap-door into the cellar beneath pursuer's shop, a distance of feet.

3. As the result of said fall the pursuer's right arm and two of his ribs were broken, and his left ankle twisted and sprained. In consequence of said injuries the pursuer was confined to bed for weeks, and was further prevented from following his usual employment as a for weeks. He suffered severe pain during the greater part of that time, and is still suffering from nervous shock to his system. Besides the solatium due to the pursuer for the said injuries, he has incurred heavy expenses for medical attendance, and has sustained damage through loss of employment. The amount of the loss, injury and damage which the pursuer has sustained through said injuries is moderately estimated at the sum sued for.

4. The said injuries to the pursuer were caused by the fault of the defender in leaving his said trap-door open without being either sufficiently fenced or lighted so as to protect persons passing along the pavement from falling into the same. When the pursuer fell through the said trap-door there was no fence round it nor any light to warn the pursuer that said trap-door was open; the night was dark, and there was no light in the street sufficient to show pursuer that the trap-door was open.

5. The defender is both owner and occupier of the premises and

cellars to which the said trap-door is an access, and is responsible for its being open and unfenced as aforesaid. The pursuer has applied to the defender for reparation for the loss, injury and damage sustained by him as aforesaid, but the defender refuses to admit liability therefor, and the present action is therefore necessary.

PLEA IN LAW.

The pursuer having suffered loss, injury and damage through the fault of the defender as condescended on, is entitled to reparation from the defender therefor.

(2) NEGLIGENT USE OF PROPERTY.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as loss and damages sustained by the pursuer in consequence of the reckless, negligent, and improper manner in which defender carried out certain operations, alterations, and buildings on his property at No. X. Street, , during the month of 19 , which were conducted without regard to pursuer's interests, and so as to cause him serious loss.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and expenses. [And to grant warrant, &c.]

CONDESCENDENCE.

1. The pursuer is a grocer, and carries on business at No. X. Street, . He resides in a dwelling-house which is situated partly behind and partly above his said business premises. The said shop and house are his own property. The defender is a draper, and carries on business in premises immediately adjoining the pursuer's, and which are his own property.

2. In the beginning of 19 the defender took down the buildings containing his own premises, and thereafter erected new premises thereon. These operations the defender conducted with

a complete disregard for the interests of the pursuer, and so as to cause him serious loss. Although the hoarding in front of the defender's premises not only enclosed the whole pavement, but projected five feet into the roadway, the lime and the plaster used during the erection of the new building were mixed outside the hoarding and directly in front of pursuer's shop door. This interfered seriously with the comfort of the pursuer and his customers, and prevented many of the latter from entering the shop.

3. During the demolition of the old buildings no means were taken to lay the dust thereby caused, and in consequence the whole interior of the pursuer's shop, for the weeks the demolition occupied, was continually covered with a thick coating of lime and dust, and a great quantity of pursuer's goods were from this cause rendered unfit for sale. The pursuer used every endeavour to keep his shop and goods clean, but, notwithstanding all his efforts, he was unable to do so. If the defender had adopted the usual precaution of keeping the building sprinkled with water this damage would have been materially lessened, if not altogether obviated. Further, in the course of taking down the said buildings, the defender unwarrantably, illegally, and without any notice to pursuer, broke a large opening through the wall forming the west side of the pursuer's kitchen. The said opening was not rebuilt for at least days, during which time the said room was left unprotected and open to the weather and the dirt and dust from the buildings. The pursuer and his family were thereby caused great inconvenience, and the furniture in the apartment was damaged.

4. Besides the unnecessary discomfort and annoyance which the pursuer has suffered, and the damage which has been done to his premises and the goods and effects therein, the pursuer's business has been seriously interfered with and injured by the said operations of the defender. In consequence of the dusty state of the shop and goods therein, owing to the said operations, and the inconvenience and discomfort to which pursuer's customers were thereby subjected, many persons who were regular customers ceased coming to the shop. The pursuer has thereby sustained serious loss. The pursuer frequently complained to defender of the damage which was being caused by his operations, and called upon him to take means to prevent the same, but without result.

5. The whole of the loss, injury and damage sustained by the pursuer as aforesaid were caused by the reckless, negligent, and improper manner in which the defender, or those for whom he is responsible, carried out the said operations. If the defender, or those for whom he is responsible, had conducted said operations

with ordinary care, and had adopted all usual and necessary precautions to prevent injury to pursuer, the damage which has been done might have been entirely or almost entirely obviated. The pursuer has applied to the defender to compensate him for the damage he has sustained as aforesaid, but the defender has refused or delayed to do so, and the present action is thus necessary. The pursuer estimates that the loss, injury and damage which he has, and will yet sustain, together with solatium for the discomfort and annoyance which he has suffered, will amount to not less than £ , being the sum sued for.

PLEAS IN LAW.

1. The pursuer having suffered loss, injury and damage through the fault of the defender as condescended on, is entitled to reparation from the defender therefor.

2. The sum sued for being reasonable compensation to the pursuer in the circumstances, he is entitled to decree therefor against the defender, with expenses.

16. Road, Interruption of.

(*See* RAILWAY CLAUSES ACTS, No. 1.)

17. Seduction.

(*See* MARRIAGE, BREACH OF PROMISE OF; SEDUCTION.)

18. Sheriff-Officer (Failure of Duty).

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

S. F., sheriff-officer in X., and E. R. and M. N., writers there, his cautioners, *Defenders*.

The claim of the pursuer is—

For payment by the defenders, jointly and severally, to the pursuer of £ as loss and damages sustained by pursuer in consequence of the failure of the defender S. F. in his duty in wrongfully and culpably delaying to use arrestments in the hands of W. & Co., contractors in X., which he had been instructed by Mr. T. M., solicitor, Y., as agent for pursuer, to

use on the dependence of an action at pursuer's instance against L. R. [*designation*], whereby the said arrestments proved ineffectual and inept.

Therefore the pursuer craves the Court—

To grant a decree against the defenders jointly and severally for payment to the pursuer of—(1) £, with interest from 19 till payment; (2) £ , with interest from 19 till payment; (3) shillings; and (4) £ , with expenses.

CONDESCENDENCE.

1. The pursuer is a merchant in X. The defender S. F. is a sheriff-officer there, and the other defenders, E. R. and M. N., are cautioners for the said S. F. for the due performance of his duties as sheriff-officer, conform to bond of caution acted in the Books of Court, and dated 19 .

2. On 19 Mr. T. M., solicitor, Y., for the pursuer, obtained from the Sheriff of a warrant of service and arrestment in an action at the pursuer's instance against L. R. [*designation*]. On the same day, between and o'clock P.M., Mr. M. posted to the defender S. F. a registered letter containing the principal petition in the said action with the warrant thereon, and also a service copy thereof, and requested him to serve the same on the said L. R., and also to use arrestments on the dependence thereof in the hands of W. & Co., contractors in X., who were at the time due to the said L. R. a sum much in excess of the pursuer's claims against him.

3. The defender S. F., as the pursuer believes and avers, received the said registered letter in due course of post, viz., early in the morning of 19 . Although the defender S. F. was well aware that it was his duty to at once lay on the said arrestments, he wrongfully and culpably delayed doing so until between and o'clock on the . Prior to the laying on of the said arrestments, viz., some time in the afternoon of the 19 , the said W. & Co. had paid away to the said L. R. the whole moneys in their hands due to him, amounting to, as the pursuer avers, at least £ . Through the defender S. F.'s negligence the pursuer's arrestments thus proved ineffectual and inept.

4. The pursuer has since obtained decree in absence in the said action against L. R. for—(1) The sum of £ , with interest at 5 per cent. from 19 ; (2) £ of expenses in the said action, and shillings dues of extract, being the first three sums sued for. The pursuer also incurred expenses in connection with the

said inept diligence, amounting to £ , being the sum fourth sued for. The extract decree and account for the said sums are herewith produced and referred to.

5. The pursuer has required the said defender S. F. to make payment to him of the sums sued for, as having been lost to the pursuer through the said defender's culpable and negligent failure of duty, and has also intimated the extent and grounds of his claim to the other defenders, the said S. F.'s cautioners; but they all delay or refuse to make such reparation to the pursuer, and this action is therefore necessary.

PLEAS IN LAW.

1. The pursuer having suffered loss to the extent sued for through the first defender's culpable and negligent failure of duty as condescended on, is entitled to reparation as craved.

2. The defenders E. R. and M. N., being cautioners *in solidum* with the other defender S. F. for his due performance of duty, are liable, conjunctly and severally with him, to the pursuer in reparation of the loss suffered by the pursuer through the said S. F.'s failure of duty as condescended on.

19. Slander.

(*See* SLANDER.)

20. Trespass.

(1) UNDER WINTER HERDING ACT.

NOTE.—*Under this Act* (1686), *c.* 11, *the proprietor of land on which trespassing cattle are found may retain* (*poind*) *them until they are redeemed by their owner at the statutory rate of half a merk Scots per head. The poinder must, it would seem, have actual possession of the animals when he claims the penalty, and must deliver them on payment of half a merk for each. He has no claim for past trespasses even by the same animals* (*Fraser*, 1 *F.* 487). *The Act is nearly but not quite obsolete.*

(2) AT COMMON LAW.

Sheriffdom of at .

A. B. [*designation*], tenant of the farm of X., in the parish of R. and county of S., *Pursuer*,

against

C. D. [*designation*], tenant of the farm of Y. in said parish and county, *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as injury and damage sustained by the pursuer during the months of and 19 , in consequence of the trespass of defender's cattle on pursuer's farm.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The pursuer is tenant of the farm of X., and the defender is tenant of the farm of Y. The said farms are both situated in the parish of R. and county of S., and adjoin each other.

2. At the point where the two farms meet they are divided by the Water, the field on the pursuer's side at that point being named the Priest's Field, and that on the defender's side the Echo Field.

3. The said Water is at all seasons deep enough to be a sufficient fence against sheep passing from the one side to the other. Of late, however, the defender has begun to put young cattle into the said Echo Field. These easily ford the stream when it is low, and trespass on the pursuer's farm, to the great injury of his pasture. In particular [*give instances of trespass as accurately as possible*].

4. The pursuer has repeatedly called on the defender to take means to prevent his cattle trespassing on the pursuer's farm, but he declines or delays to do so, and this action is thus necessary.

5. The injury to the pursuer's said pasture by the trespass of the defender's cattle is moderately stated at the sum sued for.

PLEA IN LAW.

The defender having negligently allowed his cattle to trespass on and injure the pursuer's lands, the pursuer is entitled to reparation therefor as craved.

Repayment.

Repayment of Price of Horse, Disconform to Warranty.

(*See also* WARRANT TO SELL.)

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For repayment of £ paid by him to defender as the price of a horse sold by defender to pursuer on 19 , under a warranty to which said horse has proved disconform.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ [under deduction of the balance, if any, realised by the sale of said horse under judicial authority] with interest from till payment, and with expenses.

CONDESCENDENCE.

1. On the defender sold to pursuer a bay horse at the price of £ , which sum pursuer paid defender by cheque on same day, under an express warranty that the said horse was sound, free from vice, and a good worker in cart or plough.

2. The said horse is unsound [*state particulars*], and is otherwise disconform to said warranty.

3. The pursuer accordingly on wrote defender informing him of the defects of said horse, and requesting him to repay the price thereof, but the defender refuses or delays to do so.

4. The pursuer on placed the said horse in the livery stables of Messrs. X. & Y., where it at present remains at defender's expense.

PLEA IN LAW.

The said horse having proved disconform to the warranty under which it was bought and paid for by pursuer, pursuer is entitled to repetition of said price, with expenses, as craved.

Repetition.—*See* ERROR; RELIEF.

Reponing Note.

Sheriffdom of at .

Note for

A. B. [*designation*], *Defender*,
in action against him at the instance of
C. D. [*designation*], *Pursuer*.

Decree in absence was pronounced against the defender in this action on 19 .

[*State defender's explanation of his neglect to enter appearance, and produce any certificates, medical or others, in support of explanation.*]

The said decree has [*or* has not] been extracted, and [*say whether implemented, and if so, to what extent*].

The defender proposes to defend the action on the following grounds:—[*state them shortly*].

The defender therefore moves the Court—

To repone the defender.

Report.

1. Report of Commission.

(*See* SHERIFF COURTS ACT, 1907, r. 65.)

At , the day of years, in presence of T. M., solicitor, X., commissioner appointed by interlocutor of Mr. Sheriff , dated 19 (of which a certified copy was produced to the commissioner), to take the oaths and examinations of witnesses [and/*or* to examine havers] in the action depending in the Sheriff Court of Y., at the instance of A. B. [*designation*], pursuer, against C. D. [*designation*], defender, which commission the said T. M. accepted, and appointed G. P. [*designation*], to be clerk, and J. H. [*designation*], to be shorthand writer to the commissioner, and administered to the said G. P. and J. H. respectively, the oath *de fideli administratione officii*.

Appeared for the pursuer, Mr. , solicitor, X.; and for the defender, Mr. , solicitor there.

Compeared [*name and designation*] (mentioned in the said interlocutor), who, being solemnly sworn and examined as a witness [and/*or* haver] for the pursuer, depones [*narrate evidence and productions, if any*].

Compeared also [*and so on*].

Certified correct,

J. H.

2. Report under Remit.

[*Interlocutor making remit.*]

In terms of the foregoing interlocutor, I have examined, &c. [*or whatever else the reporter has been required to do*], and now beg humbly to report as follows:—

[*Narrate facts brought out in remit in detail.*]

Humbly reported by,

[*Signature of Reporter.*]

[*Place and date.*]

3. Another Form.

[*Place and date.*] In terms of your Lordship's interlocutor of 19 , in the action at the instance of A. B. against C. D., I examined (in presence of the parties to the action) the wall between their respective properties, Nos. 14 and 16 R. Street, , and have to report that the said wall is in such a state of decay and dilapidation that it is incapable of being repaired, and that in my opinion it will be necessary to take it down and rebuild it.

Humbly reported by,

[*Signature of Reporter.*]

4. Report of Sale in Poinding.

Sheriffdom of at .

Report of Sale under the Poinding executed by the Pursuer,
in the action at the instance of
A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

In terms of the warrant of sale granted by your Lordship on 19 , the pursuer instructed R. S., licensed auctioneer [*address*], to sell by public roup as many of the effects poinded as would pay the debt contained in the diligence for which the poinding was executed, interest due thereon, and expenses. The said R. S., after due advertisement and intimation of the sale in terms of the said warrant, sold the whole of the said poinded effects by public roup within the premises where the poinding was executed upon the day of 19 . The sum realised was £ , which, being applied in extinction of—

1. Expenses of sale as taxed . . . . £
2. The auctioneer's charges . . . .
3. The debt and diligence . . . .

Leaves an unpaid balance of . £

For which balance the pursuer respectfully craves decree against the defender.

Repositories, for Warrant to Open, and to Inventory.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*.

The demand of the pursuer is—

For warrant to open the repositories and shut and lockfast places in the house, No. X. Street, , lately occupied by the deceased D. C. [*designation*], who died on , while on a visit to M., and was buried there; to inventory, take possession of, and lodge with the Clerk of Court the papers, money, and articles of value therein, and to inventory the furniture and effects therein, and thereafter to lock up and secure said house, repositories, and lockfast places.

Therefore the pursuer craves the Court.

To grant warrant to E. F. [*designation*], or such other person as the Court shall think fit, to open the repositories, shut and lockfast places within the said dwelling-house, to inventory the papers, money, and other articles of value therein, and to take possession of and lodge with the Clerk of Court such of the said papers and others as he shall think fit; and further, to inventory the furniture and other effects within the said dwelling-house, and thereafter to lock up and secure the said house, repositories, and lockfast places; and to report.

CONDESCENDENCE.

1. The pursuer has been the law-agent of the said deceased D. C. since the year 18 until his death on 19 . The said D. C. usually resided in his own house at No. X. Street, , but died while on a visit to M., and was buried there. As was his habit when away from home, he shut up his house, and left the keys with the pursuer, in whose possession they now are.

2. At various times during the years 19 , 19 , and 19 , the pursuer prepared, on the instructions of the said D. C., numerous testamentary writings disposing of his estate in various ways, but the pursuer is not aware whether any of them or which are still in existence.

3. The only relatives of the said D. C. of whose existence the pursuer is aware are some distant cousins, none of whom took any benefit under or were named in any of the testamentary writings prepared by the pursuer.

4. The said D. C.'s house contained a number of valuable pictures and works of art, besides the usual household furniture and effects, and, in the circumstances above stated, the pursuer thinks it advisable, in the interests of whoever may be entitled to the deceased's estate, that these should be inventoried, and so far as necessary taken possession of or secured under the authority of the Court.

PLEA IN LAW.

There being no person entitled in the meantime to the possession of the estate of the said deceased D. C., warrant should be granted as craved.

Residuary Legatee, By, for Accounting against Trustees.—*See* ACCOUNTING, No. 9.

Restoration.—*See* DELIVERY; POINDING.

Restriction of Alimentary Decree, for.—*See* ALIMENT, No. 8.

Revocation of Donations between Spouses.—*See* DONATIONS, REVOCATION OF.

Right of Way.—*See* DECLARATOR, Nos. 6 and 7; SERVITUDE.

Rivers, Pollution of.—*See* DECLARATOR, No. 8; INTERDICT; NUISANCE; POLLUTION OF RIVERS.

Roads and Bridges Act, 1878.—*See also* RAILWAY CLAUSES ACTS; SERVITUDE.

For Injury to Road by Extraordinary Traffic.

This action is under the 57th section of the Roads and Bridges Act, 1878, *and the Local Government (Scotland) Act,* 1889, *and is summary.*

Sheriffdom of at .

The District Committee of the County Council of the county of , *Pursuers,*

against

W. & Co. [*designation*], *Defenders.*

The claim of the pursuers is—

For payment by the defenders to the pursuers of £ as damages sustained by the pursuers in consequence of the extraordinary traffic along the road from the R. Station of the Railway to the village of R., and thence by the road

from R. past T. to the reservoir at Glen , caused by the traction engines belonging to or used by the defenders during the last three months in the conveyance of the plant, materials, &c., required for the construction of said reservoir, in the repairing of which roads extraordinary expenses have been incurred by pursuers.

Therefore the pursuers crave the Court—

To grant a decree against the defenders for payment to the pursuers of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The pursuers are the District Committee of the County Council of the county of . The defenders are large public works contractors, and carry on business in various parts of the country, and, *inter alia*, at , in the county of .

2. The defenders are at present in course of carrying out the contract for a large reservoir at Glen , in the parish of , for the supply of water to the burgh of X. The whole of the materials, plant, &c., for the said work arrive at the R. Station of the Railway Company, and are taken thence by traction engines along the road from said station to the village of R., and thence by the road from R. past T. to a point about yards east of the Glen farmhouse, which is the nearest point to the said reservoir.

3. The said traction engines, of which two are employed, each make journeys along said road per day, drawing waggons. These waggons themselves weigh tons each, and carry a load of from to tons. As a result of this extraordinary traffic, the said roads, and particularly the road from the village of R. to the site of the reservoir (which is only constructed for comparatively light and infrequent local traffic), have been seriously damaged. There is produced herewith a certificate by J. S., the district surveyor for the roads within the pursuers' district, to the effect that having regard to the average expense of repairing highways in the neighbourhood of the roads in question, extraordinary expenses have been incurred by the pursuers in repairing the said roads, by reason of the extraordinary traffic thereon as above narrated. The defenders are the persons by whose order the said extraordinary traffic has been conducted.

4. The extraordinary expenses so incurred by the pursuers have amounted during the period from 19 to 19 , as appears from the said certificate, to the sum of £ , being the

sum sued for. The pursuers have applied to the defenders for payment of the said extraordinary expenses, but they deny all liability therefor, and this action is thus necessary.

PLEA IN LAW.

The pursuers having incurred extraordinary expenses in repairing the highways mentioned in the condescendence, in consequence of the extraordinary traffic conducted thereon by the orders of the defenders, are entitled to decree against the defenders for payment thereof as craved.

Sale.—*See* COMMON PROPERTY; DECLARATOR, Nos. 9 and 10; DELIVERY; IMPLEMENT, No. 1; INTERDICT, No. 3; MOTIONS; WARRANT.

Sale and Return.—*See* DELIVERY, No. 5.

Salmon Fishings.—*See* DECLARATOR, No. 3; LEASES.

Salvage.—*See* SHIPPING.

Samples, for Return of.—*See* DELIVERY, No. 1.

School.—*See* EDUCATION ACTS.

Seamen.—*See* SHIPPING.

Search, for Implement of Obligation to Grant.—*See* IMPLEMENT, No. 2.

Seats (Church).

1. To Allocate Sittings in Rebuilt Church.

(*See* CHURCH.)

2. To Allocate Free Seats in Quoad Sacra Church.

(*See* CHURCH.)

3. For Interdict against Entering Sittings in Parish Church.

Sheriffdom of at .

A. B. [*designation*], proprietor of the lands of S., and as such a heritor of the parish of X. in the county of Y., *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For interdict against the defender from using, by himself or others, pew No. 12 in the area of the parish church of X., and from interfering with pursuer, his family, or dependants in their use thereof, and for interim interdict.

Therefore the pursuer craves the Court—

To interdict the defender from entering or using, by himself or others, the said pew, and from interfering in any way with the pursuer's use and occupation thereof: To grant interim interdict; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is proprietor of the farm and lands of S., in the parish of X. and county of Y., and as such is a heritor of the said parish. The defender is tenant of a cottage in the village of X.

2. By decree of the Sheriff of Y., dated 18 , in a petition for the allocation of the seats in the parish church of X., there were allocated to the pursuer's said lands of S. the whole of pew No. 12 in the area of the church, and three sittings in pew No. 71 in the gallery.

3. For some time past the defender has, without the pursuer's leave and without any right or title whatever, occupied, by himself and other members of his family before the time set for public worship, part of the pursuer's said pew No. 12. The pursuer, his family, and servants have thus been prevented from occupying their sittings in the said pew, and have on several occasions had to apply to other heritors for accommodation in their pews.

4. The pursuer has both verbally and by letter requested the defender to desist from the said encroachment, but the defender persists therein, and publicly states his intention of continuing to occupy the said pew. The present action is thus necessary.

PLEA IN LAW.

The pursuer having, by virtue of the decree condescended on, right to occupy the sittings in the said pew, is entitled to have the defender interdicted from occupying the same as craved.

Security, to Compel Assignation of.—*See* BANKRUPTCY, No. 23.

Seduction.

NOTE.—*As a rule, breach of promise of marriage, actual or implied, is the ground of an action of seduction. This, however, is not absolutely necessary, provided there be circumstances, such as superior position (master) or the youth of the girl, which gave the seducer control or influence over the woman (Gray, 39 S. L. R. 258; M'Lean, 10 S. L. T. 593).*

The action may be raised after the death of the seducer against his representatives (Kay, 12 D. 845; Maloy, 22 S. L. R. 790).

No action will lie where the seduction has taken place in a country in which action could not on the same averments be maintained (Ross, 19 R. 31).

A husband may, whether he divorces his wife or not, sue an action of damages for her seduction.

1. Damages for Breach of Promise and Seduction.

(*See* MARRIAGE, BREACH OF PROMISE OF.)

2. For Damages for Seduction and Inlying Expenses and Aliment.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of (1) £ as damages for the seduction of the pursuer by the defender; (2) £ as the inlying expenses incurred by the pursuer in connection with the birth of a child on , of which defender is the father; and (3) £ yearly for years, quarterly and in advance, as aliment for said child.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of (1) £ , with interest from the date of citation; (2) £ , with interest from [*date of birth*]; and (3) £

per annum for [seven, *or if a girl*, ten] years, quarterly and in advance as from [*date of birth*], with interest on each instalment from its due date; and to find the defender liable in expenses. [And to grant warrant, &c.]

CONDESCENDENCE.

1. The pursuer is nineteen years of age, and resides with her mother, who is a widow, at No. 29 R. Crescent, . The defender is about thirty-five years of age, and carries on business as a stationer and dealer in fancy goods at 104 F. Road, .

2. In the month of March 19 the pursuer, learning that the defender required an assistant in his shop, applied for the situation, which she obtained. Her wages were per week. From the beginning of her employment in his service the defender always treated the pursuer with great kindness. He on several occasions gave her small sums of money in addition to her wages, and he frequently made her presents of books, ornaments, &c., out of the shop. He also [*narrate in detail any other actings of defender*]. He thus acquired over the pursuer, who was at the time only years of age, a great influence and ascendency.

3. [*Give details of act or acts of connection.*] The defender thus, by the artful practices, continued solicitations, and the exercise of authority and force over a young, inexperienced, and dependent female, seduced the pursuer.

4. In consequence of the said acts of connection the pursuer became pregnant, and on 19 was delivered of a male child, of which the defender is the father. The pursuer has, through the defender's cruel and heartless seduction of her as aforesaid, been deeply injured in her feelings, character, prospects, and reputation. She has as a result thereof been out of work for nearly a year, and will have very great difficulty in procuring employment.

5. The defender is, the pursuer believes and avers, a comparatively wealthy man. He has been in business for over twenty years, and he also inherited considerable sums of money and several houses from his father and from an aunt. The pursuer has applied to the defender for reparation for his seduction of her, and also for the inlying expenses and aliment of the said child, but without success. The present action is therefore necessary.

PLEAS IN LAW.

1. The defender having seduced the pursuer as condescended on, is liable in reparation to the pursuer therefor.

2. The defender being the father of the pursuer's illegitimate child, she is entitled to decree for inlying expenses, and for aliment of the said child, as concluded for.

Sell, for Warrant to.—*See* SHIPPING; WARRANT.

Separation and Aliment.

Sheriffdom of at .

A. B. or C., residing at Street, , wife of D. C. [*designation*], presently residing at Street, , *Pursuer*,

against

The said D. C., *Defender*.

The demand of the pursuer is—

For declarator that on account of defender's cruelty [*or*, adultery with E. F., *or*, with a woman whose name and address are unknown to pursuer] pursuer is entitled to decree of separation *a mensa et thoro*, and to aliment for herself and each of her children; and for custody of the said children, and expenses.

Therefore the pursuer craves the Court—

To find it proven that the defender has been guilty of cruelly maltreating the pursuer, his wife [*or*, that the defender has been guilty of adultery with E. F. [*designation*], *or*, with a woman whose name and address are unknown to the pursuer]: To find therefore that the pursuer has full liberty and freedom to live separate from the defender: To decern and ordain the defender to separate himself from the pursuer, *a mensa et thoro*, in all time coming: To find pursuer entitled to the custody of G. C., E. C., and F. C., the children of the marriage between pursuer and defender: To interdict the defender from interfering in any way with said children or with the pursuer as their custodian: To grant a decree against the defender for payment to the pursuer of £ yearly for aliment to herself, and £ yearly for aliment to each of her said children, payable half-yearly at Martinmas and Whitsunday, by equal portions, beginning the first payment at the term of last for the half-year immediately following, and so forth half-yearly thereafter during the joint lives of the pursuer and the defender as regards the pursuer's aliment, and as regards the aliment for each of their said children, so long as they shall be unable to earn a livelihood,

and shall remain in the custody of the pursuer, with interest on each half-year's aliment from the term of payment until payment; and to find defender liable in expenses.

CONDESCENDENCE.

(*Adultery.*)

1. The pursuer and defender were married at on 19 by the Rev. Mr. . An extract of the marriage is herewith produced. Three children have been born of the marriage—Gladys, aged 6; Edward, aged 4; and Frederick, aged 2.

2. After marriage pursuer and defender resided at , where they lived happily for some two years. In the summer of 19 defender began to be less affectionate in his demeanour towards pursuer, and was constantly making complaints about the condition of the house and the clothing and education of the children.

3. In the spring of 19 the pursuer, owing to defender's complaints, and at his request, advertised for a nursery governess, and in reply received a number of answers; among others, from E. F., whom she ultimately engaged.

4. The said E. F. accordingly took up residence with defender's family in the month of May 19 .

5. Soon after her arrival pursuer began to suspect that her husband was paying E. F. more attention than was necessary or customary towards his children's governess. On one occasion, towards the end of August, pursuer discovered defender with his arm round E. F.'s waist. On pursuer's remonstrating with defender, he assured her there was nothing wrong in his action, and that it would not happen again.

6. About the middle of September 19 the pursuer had occasion to go on a visit to her mother at for the week end. On her return home pursuer was informed by J. H., the tablemaid, that on the Sunday night she heard the noise of someone entering and leaving E. F.'s bedroom. Pursuer suspected that her husband had been in E. F.'s bedroom, and on her taxing E. F. with misconduct with defender, E. F. burst into tears, and admitted that defender had come to her bedroom about midnight on Sunday the September, but that nothing of an improper nature had happened between them. She informed pursuer that defender had come to her room for a box of matches, as he could not sleep, and wanted to smoke.

7. [*Narrate any other occasion on which acts of familiarity or impropriety were observed.*]

8. In consequence of said last-mentioned act pursuer, on 1st October 19 , informed E. F. that she must leave her service. On informing her husband of E. F.'s dismissal he burst into a violent rage, and said that if E. F. left the house he would leave it also.

9. E. F. accordingly left pursuer's service on 13th October 19 , and, pursuer believes, went to reside in with her parents.

10. On 19 , pursuer has been informed, E. F. gave birth to a female illegitimate child, of which pursuer believes defender is the father.

11. Since last October, when E. F. left pursuer's service, defender has been very intemperate in his habits, and frequently goes out at night, occasionally remaining out all night. He has also been very unkind to the children.

PLEAS IN LAW.

1. The defender having been guilty of adultery as condescended on, pursuer is entitled to decree of separation *a mensa et thoro* and aliment, with expenses, as craved.

2. The defender having been guilty of adultery as condescended on, and it being therefore expedient, in the interests of said children, that pursuer should be their custodian, decree of custody should be granted as craved.

NOTE.—*A separate condescendence for separation on the ground of cruelty seems unnecessary. The averments must, however, be specific as to date, place, and the description of the acts complained of. See the Practice, p.* 553.

Sequestration (Mercantile).—*See* BANKRUPTCY.

Sequestration for Rent.

The following recent decisions may be noted. In applications for sequestration in security of rent, and especially in applications for a warrant to carry back, care must be taken to make the averments sufficiently specific—cf. Imrie, 1903, 20 *S. L. R.* 47; *Donald,* 1886, 13 *R.* 790; *Johnston,* 1890, 18 *R.* (*J.*) 6; *Gray,* 1891, 19 *R.* 25; *M'Laughlan,* 1892, 20 *R.* 41. *As to the rights of a third party whose property has been included in the inventory of sequestrated effects and put up for sale, cf. M'Intosh,* 1905, 13 *S. L. T.* 108.

1. For Sequestration in Security, and for Payment of Rent of Urban Subjects.

Sheriffdom of at .

A. B. [*designation*], proprietor of the dwelling-house, No. Street, , *Pursuer*,

against

C. D. [*designation*], tenant of said house, *Defender*.

The demand of the pursuer is—

For sequestration of defender's effects within said dwelling-house, in security and payment of rent, interest, and expenses; for payment of past due rents, and for an order to replenish; and failing implement, for warrant to eject the defender.

Therefore the pursuer craves the Court—

To sequestrate and to grant warrant to officers of Court to inventory and secure the whole stock, furniture, and other effects, subject to the pursuer's hypothec, which are or have been in the said premises [*if some of the effects have been removed and a warrant to carry back is desired, add*, and also to carry back from [*specify place where goods have been taken*] to the said premises such part of said stock and others as have been removed therefrom by the defender, and, in particular, the following articles [*specify them if possible*] all] in security and for payment to the pursuer of—(1) the sum of £ , being the half-year's rent thereof [*or* the sum of £ , being the balance of rent due and unpaid by the defender to the pursuer, conform to account annexed hereto—cf. *Donald*, 1886, 13 *R.* 790] due and payable at Whitsunday 19 , with interest from said term till payment, and with expenses; and (2) the [like] sum of £ , being the current half-year's rent to become due and payable at Martinmas 19 , with interest from the said term, and with expenses; and thereafter to grant warrant to sell by public roup the whole, or so much of the said sequestrated subjects as will satisfy and pay to the pursuer the said rents, interests, and expenses; and to decern against the defender for payment of said rents, interest, and expenses, or for such balance as may remain due to the pursuer after payment of expenses and all preferable claims therefrom; and, if necessary, to ordain the defender to stock and replenish the said premises so as to afford sufficient security for payment of any remaining rent payable or to become payable as aforesaid; and failing his doing so within such time and at the sight of such

person as the Court shall appoint, to grant warrant summarily to eject the defender, his family, sub-tenants, and dependants, and his effects from the said premises, and to authorise the pursuer to relet the same for such periods and for such rents as may appear best; and to grant warrant to arrest on the dependence.

CONDESCENDENCE.

1. The pursuer is heritable proprietor of the dwelling-house and other premises situated at No. Street, X., which he let to the defender by lease, dated 1st November 19 , for a period of three years from Martinmas 19 , at the yearly rent of £ , payable half-yearly in equal portions at the terms of Whitsunday and Martinmas.

2. At the term of Whitsunday 19 the sum of £ , being the half-year's rent for the preceding six months, became due and payable. The defender has been called on to make payment of the same, but he refuses or delays to do so. At the term of Martinmas 19 he will be due the like sum of £ , being the half-year's rent then payable.

3. On or about 1st June 19 the defender removed from said premises the articles above enumerated, and the furniture and goods remaining in the premises are insufficient to secure the rent payable to the pursuer. No notice was given to the pursuer of said removal, which was effected at night, without his knowledge, and for the purpose of defeating or evading the pursuer's right of hypothec. In these circumstances the pursuer's right of hypothec is in danger of being defeated.

PLEAS IN LAW.

1. The defender being in arrear in payment of his rent, and being in course of removing his effects, the pursuer is entitled to obtain sequestration of his effects in security and for payment of the rent as craved.

[2. The defender having removed his effects, the pursuer is entitled to have the same sequestrated and brought back, in security and for payment of the rent as craved.]

2. For Sequestration for Payment of Rent of Urban Subjects.

Sheriffdom of at .

A. B. [*designation*], proprietor of the shop situated at X., *Pursuer*,

against

C. D. [*designation*], tenant of said shop, *Defender*.

The demand of the pursuer is—

For sequestration of defender's effects within said dwelling-house for payment of rent, interest, and expenses due.

Therefore the pursuer craves the Court—

To sequestrate and to grant warrant to officers of Court to inventory and secure the whole stocks, furniture, and other effects, subject to the pursuer's hypothec, which are or have been in the said premises, for payment to the pursuer of—(1) the sum of £ , being the half-year's rent thereof, due at Whitsunday 19 , with interest from the said term, and expenses; and (2) the like sum of £ , being the half-year's rent thereof, due at the term of Martinmas 19 , with interest from the said term, and expenses: To decern against the defender for payment of said rents, interest, and expenses, or for such balance as may remain due to the pursuer after sequestration and sale and payment of expenses and all preferable claims therefrom; and to grant warrant to arrest on the dependence.

CONDESCENDENCE.

1. The pursuer is heritable proprietor of the shop and cellar and other premises situated at X., now or formerly occupied by the defender as tenant thereof under the pursuer.

2. The pursuer let to the defender the said premises for one year from Martinmas 19 to Martinmas 19 , at the yearly rent of £ , payable half-yearly in two equal portions at the terms of Whitsunday and Martinmas respectively.

3. Though called on to do so, the defender refuses or delays to make payment of, or provisions for, any portion of the year's rent of the said premises.

PLEA IN LAW.

The defender being in arrear in payment of his rent, the pursuer is entitled to obtain sequestration of his effects for payment of the rent and decree for any balance due.

3. For Sequestration in Security, and for Payment of Rent of Agricultural Subjects.

Except in the case of lands held under a lease current at Martinmas 1881, *this action is only competent where the subjects do not*

exceed two acres in extent—Hypothec Abolition (Scotland) Act, 1880, *sec.* 1.

Sheriffdom of at .

A. B. [*designation*], proprietor of the farm and lands of X. in the parish of Y. and county of Z., *Pursuer*,

against

C. D. [*designation*], tenant of said farm under a lease dated , *Defender*.

The demand of the pursuer is—

For sequestration of the crops, stock, cattle, furniture, and other effects of the defender within or on said farm, and for payment of the rent, interest, and expenses due.

Therefore the pursuer craves the Court—

To sequestrate and to grant warrant to officers of Court to inventory and to secure the whole corns and other crops on the said farm and lands of X., and also the whole stock, horses, cattle, sheep, and other bestial, implements of husbandry, furniture, and other effects, which are or have been on the said farm during the year aforesaid, subject to the pursuer's hypothec, in security and for payment to the pursuer of—(1) £ , being the half-year's rent thereof due and payable at the term of Martinmas 19 , with interest from the said term, and expenses; and (2) the like sum of £ sterling, being the current half-year's rent to become due and payable at Whitsunday 19 , with interest from the said term of Whitsunday 19 , and expenses; and thereafter to grant warrant to sell, &c. [*as in Form No.* 1, supra].

CONDESCENDENCE.

1. The pursuer is heritable proprietor of the farm and lands of X. in the parish of Y., presently occupied by the defender under a lease granted by the pursuer for a period of five years from Whitsunday 19 , at a yearly rent of £ , payable in two half-yearly instalments of £ at Martinmas and Whitsunday respectively.

2. At the term of Martinmas 19 the sum of £ , being the half-year's rent for the preceding six months, became due and payable. The defender has been called on to make payment of the same, but he refuses or delays to do so. At the term of Whitsunday 19 he will be due the like sum of £ , being the half-year's rent then payable.

3. On or about 1st November 19 , a petition for cessio was presented in the Sheriff Court of at , at the instance

of L. M. against the defender, who is notour bankrupt. In these circumstances the present action is necessary to preserve the pursuer's right of hypothec.

4. The farm and lands of X. do not exceed two acres in extent.

PLEA IN LAW.

The defender being in arrear in payment of his rent, and being notour bankrupt, the pursuer is entitled to obtain sequestration of his effects in security and for payment of the rent as craved.

4. For Sequestration and Surrogation.

In certain cases—as when the effects of a tenant have been sold by a poinding creditor or by the landlord in a previous sequestration—and it is desired to attach the proceeds of the sale, a petition for sequestration and surrogation may be presented in the following form :—

Sheriffdom of at .

A. B. [*designation*], proprietor of the dwelling-house situated at X. in the parish of Y. and county of Z., *Pursuer*,

against

C. D. [*designation*], tenant of said house, *Defender*.

The demand of the pursuer is—

For sequestration of the free proceeds of the sale of defender's effects, after payment of all expenses and the year's rent of said house from Martinmas 19 to Martinmas 19 , presently consigned in the hands of the Clerk of Court, and for surrogation of the said free proceeds for the defender's effects in said house for payment of the year's rent due at Martinmas 19 , and interest and expenses.

Therefore the pursuer craves the Court—

To sequestrate the free proceeds of the sale of defender's effects in said house carried out by E. F., auctioneer, , on 19 , subject to the pursuer's hypothec, presently consigned in the hands of the sheriff-clerk for payment to the pursuer of £ , being the year's rent of the said dwelling-house, due at the term of Martinmas 19 , with interest from the term of Martinmas 19 , and expenses; and to surrogate the said free proceeds of sale, so far as applicable, for the whole furniture and other effects which were in the said dwelling-house, and which were subject to the pursuer's hypothec prior to said sale on

19 , for payment to the pursuer of the rent, interest, and expenses aforesaid out of the said proceeds.

CONDESCENDENCE.

1. The pursuer is heritable proprietor of the dwelling-house and other premises situated at X., which were let to the defender for a period of one year from Martinmas 19 , at a yearly rent of £ , payable at Martinmas 19 .

2. The defender has failed to make payment of the said sum of £ due at Martinmas 19 .

3. On 19 the pursuer obtained warrant, in an application for sequestration for rent against the defender, to sell the effects in the premises occupied by him at X., for payment of the year's rent from Martinmas 19 to Martinmas 19 . The sale was carried out under warrant of Court by E. F., auctioneer, , on 19 , and the proceeds thereof, amounting to £ , were consigned by him in the hands of the sheriff-clerk on 19 . After payment of the auctioneer's and sheriff-clerk's expenses, and the rates and taxes outstanding, and after satisfying the rights of the pursuer under said warrant, there remains in the hands of the sheriff-clerk a considerable balance of free proceeds of the said sale. Said proceeds are in substitution of the effects of the defender, which are subject to pursuer's hypothec for the year's rent to Martinmas 19 as aforesaid.

PLEAS IN LAW.

1. The defender being in arrear in payment of his rent, the pursuer is entitled to obtain sequestration of his effects for payment as craved.

2. The said proceeds of sale being in surrogation of the defender's effects, pursuer is entitled to payment out of said proceeds as craved.

5. For Warrant to Stock and to Plenish, and for Warrant to Relet.

(*See* LEASES.)

6. Minute of Compearance for Third Party in Sequestration.

A third party whose property has been improperly included in the inventory of sequestrated effects should appear by minute, and not by separate action—M'Kechnie, 1853, 15 *D.* 623; *Christie's Trs.*, 1872, 10 *M.* 708.

Minute for E. F. [*designation*] in the petition for sequestration for payment of rent at the instance of A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], *Defender*.

The minuter craves the Court to allow him to compear in the cause. He claims that [*specify articles claimed*] specified in the inventory and appraisement in said sequestration are his property, and have been erroneously included therein, and that *quoad* them the sequestration should be recalled.

[*Signed by E. F. or his agent.*]

7. Minute for Warrant to Carry Back and Inventory.

Minute for A. B. [*designation*]

in the

Petition for sequestration in security and for payment of rent at the instance of the said A. B., *Pursuer*,

against

C. D. [*designation*], *Defender*.

In respect the defender the said C. D. has removed the whole of the goods and effects which were situated in the house 13 X. Street, and subject to the pursuer's right of hypothec for the rent thereof due at Martinmas last, to a house which he now occupies at 14 Y. Street surreptitiously, under cover of night, and without notice to the pursuer, warrant is craved to officers of Court to search for and carry back from 14 Y Street said goods and effects, and in particular the following articles [*specify them*] to 13 X. Street, there to be inventoried and secured in terms of the warrant dated .

[*Signed by pursuer or his agent.*]

8. Minute for Order to Replenish.

Minute for A. B. [*designation*],

In the petition for sequestration in security and for payment of rent at the instance of the said A. B., *Pursuer*,

against

C. D. [*designation*], *Defender*.

In respect that, after the sale which has taken place under warrant of the Court for the rent due at Martinmas 19 , there remain no effects on the premises adequate to afford the pursuer security for the rent to become due at Whitsunday 19 , the Court is craved to ordain the defender to replenish in terms of the crave of the writ.

[*Signed by A. B. or his agent.*]

9. Caveat in Petitions for Sequestration for Rent.

To L. M., Sheriff-Clerk at .

Caveat

for

A. B. [*designation*].

Should any application be presented for the sequestration of [*or*, for warrant to carry back] the effects belonging to A. B. [*designation*], situated at , it is requested that notice thereof be given to the subscriber, who will show cause why the same should not be granted.

[*Signed by A B. or his agent.*]

10. For Breach of Sequestration.

NOTE.—*In some cases it may be found sufficient to meet a breach of sequestration by applying for a warrant to carry back. Should it be desired to proceed further, a complaint may be presented in the following form—with which an application for warrant to carry back may be combined.*

Sheriffdom of at .

A. B. [*designation*], with the concurrence of L. M., Procurator-Fiscal of , *Pursuer*,

against

C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For declarator that defender by his actings has committed a breach of the sequestration granted against him at the instance of the pursuer by decree dated , and for payment of a penalty by the defender therefor, or failing payment, for his imprisonment.

Therefore the pursuer craves the Court—

To appoint the defender to appear personally to answer for said breach of sequestration; and on the charge being admitted or proved, to fine him in the sum of £ sterling, or in such other sum as the Court shall determine, or otherwise, or failing payment of such fine, to grant warrant for imprisoning him for such period as the Court shall appoint: [To grant warrant to officers of Court to search for, *&c.* [*take in conclusion for warrant to carry back, as in Form No.* 1, supra]]; and to find the defender liable in expenses.

CONDESCENDENCE.

1. On the pursuer presented a petition to the Court setting forth [*state shortly the facts narrated in the original petition*], and praying the Court [*state the prayer*].

2. On the Sheriff-Substitute of pronounced decree as follows [*quote the interlocutor granting sequestration*].

3. On G. H., officer of Court, served the defender with a copy of the said petition, condescendence, plea in law, and warrant, and also a copy of the inventory of the effects sequestrated, and he made up and duly reported to the Court an inventory of the effects so sequestrated.

4. The said rents have not been paid to the pursuer, nor has the said sequestration been recalled, but nevertheless the defender, in breach of the said sequestration, and in contempt of the law and of the authority of the Court, on or about removed from the said dwelling-house and other premises occupied by him, and sold or otherwise disposed of the whole articles of household furniture, goods, and other effects sequestrated as aforesaid.

PLEA IN LAW.

The defender having been guilty of breach of sequestration, warrant and decree should be granted as craved.

I concur.

[*Signed by Procurator-Fiscal.*]

[*Address and Date.*]

11. For Wrongful Sequestration for Rent.

(*See* ILLEGAL DILIGENCE, No. 2.)

Service (Special and General).

SPECIAL SERVICE.—*Petitions for special service may be presented either to the Sheriff of the county or to the Sheriff of Chancery. If, however, the lands are situated in different counties, the petition must be presented to the Sheriff of Chancery.*

SPECIAL AND GENERAL SERVICE.—*The Consolidation Act*, 1868, *sec.* 48, *provides*—"*In any petition for special service, in whatever character, it shall be competent to the petitioner to pray for general service in the same character as that in which special service is sought.*"

GENERAL SERVICE.—*The Consolidation Act*, 1868, *sec.* 28, *enacts that in every case in which a general service only is intended to be carried through,*

the petition shall be presented to the Sheriff of the county within which the deceased had at the time of his death his ordinary or principal domicile, or, in the option of the petitioner, to the Sheriff of Chancery, but if the deceased had at the time of his death no domicile within Scotland, the petition can then only be presented to the Sheriff of Chancery. Sec. 34 *of the* 1868 *Act makes it unnecessary, if the deceased died upwards of ten years prior to the date of presenting the petition for general service as heir to him, to state or prove the county within which the deceased had his ordinary or principal domicile at the time of his death, or that such domicile was furth of Scotland. It is sufficient for the petitioner to state and depone that he is unable to prove at what place the deceased had his ordinary or principal domicile at the time of his death.*

Personal Right.—*Since* 1874 *a personal right to heritage of every description vests in the heir by simple survivance* (*Conveyancing Act,* 1874, *sec.* 9).

Completion of Title under Sec. 10.—*Sec.* 10 *and Sched. E of the Conveyancing Act provide a new form for completing a title where the prior holder had only a personal right, by presenting and carrying through a petition to the Sheriff of the county or of Chancery, as if it were a petition for special service. Decree in such petition may be obtained whilst the person last infeft is alive, and the petitioner need not be an heir. This petition is the only method of obtaining a title by an heir or disponee of a proprietor of lands who was neither infeft nor served, but vested only with a personal right by the Act of* 1874, *or by any person acquiring right from such heir or disponee. Until service or decree in a petition presented under sec.* 10 *of the* 1874 *Act, neither the heir nor his disponee can be infeft or have a complete feudal title.*

Where an ancestor has disappeared, and the date on which he is presumed to have died has been fixed by the Court in terms of the Presumption of Life Limitation (*Scotland*) *Act,* 1891 (54 *&* 55 *Vict. c.* 29, *sec.* 3), *it is advisable to aver in the petition for service or to complete title that such ancestor* "is presumed to have died on or about the day of , conform to extract decree" *of the Court fixing the presumed date of death.*

Form of Petitions.

Considerable difference both of opinion and practice formerly existed as to the correct form of the petition for service in the Sheriff Court. The writers on Sheriff Court procedure agreed that the form should be that prescribed by the Sheriff Court Act, 1876, *while the writers on conveyancing were equally unanimous in the view that the special forms prescribed by the Titles to Land Consolidation Act,* 1868, *had not been superseded. The*

practice was, it is believed, to accept petitions in either form; the old form being, however, apparently the favourite with the profession.

The provisions of the Sheriff Courts Act of 1907 *seem, however, to dispel any future doubt on the matter. That Act specifically repeals the Sheriff Court Act of* 1876, *including the forms of petition sanctioned by it, and consequently no petition in the Sheriff Court can now be competently presented in the form prescribed by the previous Act. But it also provides that "subject to the provisions of the Titles to Land Consolidation (Scotland) Act,* 1868, *and the Conveyancing and Land Transfer (Scotland) Act,* 1874, *as regards service of heirs and completion of title," all actions must be instituted in the form of initial writ prescribed in the form annexed to the Act. Applications, therefore, as regards service of heirs and completion of title must apparently now be framed in accordance with the provisions of these two last-recited Acts.*

If any part of the subjects in which the ancestor died infeft has been sold, they should be excepted at the end of the full description as in ancestor's title.

The form of appeal is precisely the same as in ordinary Sheriff Court appeal.

CAVEAT.

If any competition is anticipated, it is advisable to put up a caveat both in the Sheriff Courts of the counties in which the lands lie, or of the county in which the deceased died domiciled, and also in the Court of Chancery. The sheriff-clerks of these Courts are thereupon bound to give notice to the person on whose behalf it is lodged, if any competing petition is presented, and timeous notice of movements of the competitor is thus obtained. For form, see under CAVEAT.

The procedure in services is now governed by the Titles to Land Consolidation Act, 1868, *secs.* 30 et seq.

1. Mandates.

NOTE.—*The Consolidation Act,* 1868, *sec.* 29, *provides that mandatories must be specially authorised. The mandate need not be a separate deed, but may form part of a factory and commission for various purposes, or be embodied in another deed. It should be holograph or tested.*

(1) MANDATE IN SPECIAL SERVICE.

I, A. B. [*designation*], eldest lawful son of the deceased C. B. [*designation*], authorise E. F. [*designation*], whom failing G. H. [*designation*], to procure me duly served and decerned nearest lawful heir in special [*or* of provision in special, *or* of tailzie and provision in special, *or otherwise*

as the case may be, stating precisely the character of heir in which service is sought] to the said C. B. in the lands of X. and others in the county [*or* burgh] of M. [*if as heir of tailzie or provision, add*—under and by virtue of [*here specify the deed of entail or settlement*]], and for that purpose to subscribe and present as my mandatory the necessary petition or petitions to the Sheriff of the county of M. [*or* to the Sheriff of Chancery], to obtain extracts from Chancery, and generally to do everything requisite in the premises on my behalf.—In witness whereof.

(2) Mandate in General Service.

I, A. B. [*designation*], eldest lawful son of the deceased C. B. [*designation*], authorise E. F. [*designation*], whom failing G. H. [*designation*], to procure me duly served and decerned nearest lawful heir in general [*or* heir of provision in general, *or* of tailzie and provision in general, *or* heir-portioner in general, *or as the case may be*] to the said C. B. [*if heir of tailzie or provision* under and by virtue of [*specify deed of entail or settlement*]], and for that purpose to subscribe and present as my mandatory the necessary petition or petitions to the Sheriff of the county of M. [*or* to the Sheriff of Chancery], to obtain extracts from Chancery, and generally to do everything requisite in the premises on my behalf. —In witness whereof.

(3) Mandate in Petition for Completing Title.

I, A. B. [*designation*], authorise E. F. [*designation*], whom failing G. H. [*designation*], on my behalf to subscribe a petition to the Sheriff of Chancery [*or* of the county of L.] for completing my title, in terms of the Conveyancing (Scotland) Act, 1874, to the lands of X. in the county of L. [*or* in the burgh of M.], in which D. B. [*designation*] died last vest and seised, and for that purpose to present and carry through such petition, and as my mandatory to take all other proceedings which may be necessary in connection therewith.—In witness whereof.

2. Special Services.

(1) Statutory Form.

Titles to Land Consolidation Act, 1868, *Schedule Q.*

Form of Petition of Special Service.

Unto the Honourable the Sheriff of [*specify the county, or say* "of Chancery"],

The Petition of A. B. [*here name and design the petitioner*];

Humbly sheweth,—

That the late C. D. [*here name and design the ancestor*] died on or about the day of [*state the month and the year at full length*], last vest and seized in [*here describe or refer as in Schedule (O of Conveyancing Act) or Schedule G to the lands with reference to which the service is sought*], conform to disposition [*or other deed or conveyance*], dated the day of , and along with warrant of registration thereon, on behalf of the said C. D., recorded in the Register of Sasines [*specify register*] on the day of [*or* conform to disposition, *or whatever else was the deed or conveyance on which the ancestor's infeftment proceeded, here specify it*], dated the day of , and to instrument of sasine following thereon, recorded in the Register of Sasines [*specify register*] on the day of [*or otherwise specify the title of deceased as recorded in the Register of Sasines; and when the lands are held under a deed of entail, here insert the conditions, &c., at full length, or refer to them in or as nearly as may be in the form of Schedule C, or, if desired, refer to them as follows*], but always with and under the conditions, provisions, and prohibitory, irritant, and resolutive clauses, [*or* clause authorising registration in the Register of Tailzies, *as the case may be*], contained in a deed of entail granted by G. H. [*here name and design the granter*], dated the day of , in favour of I. K. [*here set forth the destination, or such part thereof as may be deemed necessary, or say*, and the heirs therein specified], and which conditions, provisions, and prohibitory, irritant, and resolutive clauses, [*or* clause authorising registration in the Register of Tailzies, *as the case may be*], are herein referred to as at length set forth in the said deed of entail, which is recorded in the Register of Tailzies on the day of [*or* as at length set forth in the above-mentioned recorded disposition, *or other deed or conveyance in favour of the deceased, or as at length set forth in any other recorded deed or conveyance. And in every case where there are any real burdens, conditions, provisions, or limitations proper to be inserted or referred to, insert them here, or refer to them in or as nearly as may be in the form of Schedule D* [*or Schedule H of the Conveyancing Act*]].

That the petitioner is the eldest son [*or state what other relationship or character the petitioner bears*] and nearest lawful heir in special of the said C. D. in the lands and others foresaid. [*If the service is as heir of provision, say*, that the petitioner is the eldest son [*or state what other relationship or character the petitioner bears*]] and nearest lawful heir of provision in special of the said C. D. in the lands and others foresaid, under and by virtue of a deed [*or other conveyance*] executed by E. F., dated [*here describe the deed or conveyance by date, or otherwise describe it*

so as clearly to identify it]. *And if the service is as heir of entail, say,* that the petitioner is the eldest son [*or state what other relationship or character the petitioner bears*], and nearest and lawful heir of tailzie and provision in special of the said C. D. in the lands and others foresaid, under and by virtue of the said deed of entail.

[*If it is wished to embrace a service in general in the same character as that in which special service is sought, say,* That the petitioner is likewise heir in general, *or* of provision in general, *or* of tailzie and provision in general, *or otherwise as the case may be,* of the said C. D.]

May it therefore please your Lordship to serve the petitioner nearest and lawful heir [*or* heir of provision, *or* heir of tailzie and provision, *or otherwise as the case may be*] in special of the said deceased C. D. in the lands and others above described [*and where a general service is wished, add,* and likewise nearest and lawful heir [*or* heir of provision, *or* heir of tailzie and provision] in general of the said C. D., *or whatever else is the character of heir sought to be established, here set it forth as above*]. *And where the service is as heir of tailzie and provision, say here,* but always with and under the conditions, provisions, prohibitory, irritant, and resolutive clauses [*or* clause authorising registration in the Register of Tailzies] above referred to [*or* above written]; *and where there are real burdens, &c., say,* but always with and under the real burdens, &c., above referred to [*or* above written]. *And where there are several parcels of land or separate estates, here add, if desired,* and to grant warrant to the Director of Chancery to issue separate extract decrees applicable to one or more of such parcels of land or separate estates.

According to Justice, &c.

[*Signed by the petitioner or his mandatory.*]

(2) Special Service as Heir-at-Law.

Unto the Honourable the Sheriff of Chancery [*or* of [*county where lands situated*]],

The Petition of A. B. [*designation*];

Humbly sheweth,—

That the late C. B. [*designation*] died on or about the day of nineteen hundred and , last vest and seised in All and Whole [*give description at length or by reference to subjects as in the ancestor's infeftment*], conform to disposition granted by R. S. [*desig-*

nation], in favour of the said C. B., dated the day of eighteen hundred and , and along with warrant of registration thereon, on behalf of the said C. B., recorded in the Division of the General Register of Sasines for the county of , on the day of eighteen hundred and : But always with and under the real burdens, conditions, provisions, limitations, obligations, stipulations [*or so many of these as may apply*], specified in the feu-charter by M. N. [*designation*], in favour of P. Q. [*designation*], dated the , and recorded in the said Division of the General Register of Sasines the , both days of eighteen hundred and .

That the petitioner is the eldest son and nearest lawful heir in special of the said C. B. in the lands [*or* subjects] and others foresaid.

May it therefore please your Lordship to serve the petitioner nearest and lawful heir in special of the said deceased C. B. in the lands [*or* subjects] and others above described, but always with and under the real burdens and others foresaid.

According to Justice, &c.

A. B.
or
G. P., W.S.,
Mandatory for the said A. B.

(3) Where the Ancestor has been Presumed to have Died.

The only variation in such a case is in the first paragraph of the narrative or condescendence, which commences thus—

[That] the late C. B. [*designation*], is presumed to have died on or about the day of nineteen hundred and , conform to decree of the Court of Session (Lord K., Ordinary) [*or* of the Sheriff of], dated the day of nineteen hundred and , on a petition at the petitioner's instance under the Presumption of Life Limitation (Scotland) Act, 1891, last vest and seised in All and Whole [*continue as in preceding styles*].

(4) Where a Combined Special and General Service is Desired.

The style is precisely the same as Nos. 2 or 3, with the addition at the end of the narrative or condescendence of the words—

[That] the petitioner is likewise nearest lawful heir in general of the said C. B.

The prayer will conclude—and likewise nearest lawful heir in general of the said C. B.

(5) Where Part of the Property has been Sold.

The narrative or condescendence will be—

[That] the late C. B. [*designation*], died on or about the day of nineteen hundred and , last vest and seised in All and Whole [*describe at length or by reference the lands as in the ancestor's infeftment*], conform to disposition granted by R. S. [*designation*], in favour of the said C. B., dated the day of eighteen hundred and , and along with warrant of registration thereon, on behalf of the said C. B., recorded in the Division of the General Register of Sasines for the county of on the day of eighteen hundred and : But excepting always that part of the said lands which was disponed by the said C. B. to J. K. [*designation*], by disposition dated the , and recorded in the said Division of the General Register of Sasines the , both days of nineteen hundred and , and therein described as follows, viz., All and Whole [*describe part sold*]: But always with and under [*refer to burdens as in style* 2].

[That] the petitioner is the eldest son and nearest lawful heir in special of the said C. B. in the lands and others foresaid, except as aforesaid.

The prayer will be—

[May it therefore please your Lordship] to serve the petitioner nearest and lawful heir in special of the said deceased C. B. in the lands and others above described, except as aforesaid [but always with and under the real burdens, conditions, provisions, limitations, obligations, and stipulations above specified].

(6) To Two Properties, Separate Extracts being Desired.

This is competent under sec. 36 *of the Titles to Land Consolidation Act,* 1868. *It is, however, more usual in practice to present separate petitions in a case where separate extracts are or may be required.*

The narrative will be the same as in whichever of the preceding forms is applicable, except that it will describe separately the several parcels of lands or subjects.

The prayer will be—

May it therefore please your Lordship to serve the petitioner nearest and lawful heir in special of the deceased C. B. in the several parcels of land [*or* the several subjects] and others above described, [but always with and under the real burdens, conditions, provisions, limitations, obligations, and stipulations above specified], and to grant warrant to the Director of Chancery to issue separate extract decrees applicable to each of the said respective subjects.

(7) Where Part of Subjects has been Sold under Excambion and a New Part Acquired.

(*Instance as in No.* 2 *or* 3.)

[That] the late C. B. [*designation*] died on or about the day of nineteen hundred and , last vest and seised in (First) All and Whole the lands of X. in the county of Y., being the subjects particularly described in and conform to the disposition granted by R. S. [*designation*], in his favour, dated the day of nineteen hundred and , and along with warrant of registration thereon, on behalf of the said C. B., recorded in the Division of the General Register of Sasines for the county of , on the day of nineteen hundred and , but excepting always that part of the said lands which was disponed by the said C. B. to G. H. [*designation*], under the contract of excambion between them hereinafter specified, which part is therein described as follows, viz., All and Whole [*describe at length the part excepted*]: But always with and under the real burdens, conditions, provisions, limitations, obligations, and stipulations specified in the feu-contract between M. N. [*designation*] and the said R. S., dated the day of , and recorded in the said Division of the General Register of Sasines the day of , both in the year eighteen hundred and , so far as the same still subsist and are applicable; and (Second) All and Whole the subjects previously part of the lands of Z. in the said county of Y., being the subjects disponed by the said G. H. to the said C. B. under and particularly described in and conform to the said contract of excambion entered into between the said C. B. and G. H., dated the day of eighteen hundred and , and along with warrant of registration thereon, on behalf of the said C. B., recorded in the said Division of the General Register of Sasines on the day of the said month and year last men-

tioned: But always with and under the real burdens, &c. [*complete according to preceding style*].

(8) Special Service as Heir of Provision.

Unto the Honourable the Sheriff of Chancery [*or* of [*county*]],

The Petition of A. B. [*designation*];

Humbly sheweth,—

That the late C. D. [*designation*] died on or about the day of nineteen hundred and , last vest and seised in All and Whole [*describe or refer to lands*], conform to [*narrate writs forming last investiture, and also refer to real burdens if any*].

That the petitioner is [*state how he is heir of provision*, e.g. the only son born of the marriage between G. B. [*designation*] and E. D. or B., his wife, and as such and by the death of the said C. D. without leaving heirs of his body, is nearest lawful heir of provision in special of the said C. D. in the lands and others foresaid, under and by virtue of a disposition and deed of settlement executed by the deceased L. M. [*designation*], dated the day of , and recorded in the Books of Council and Session the day of , whereby he disponed the said lands and others to and in favour of the deceased N. O. [*designation*], and the heirs of his body, whom failing to the said deceased C. D. and the heirs of his body, whom failing to the heirs born or to be born of the marriage betwixt the said G. B. and E. D. or B., whom failing [*insert the remainder of the destination, or say*] to the other heirs therein mentioned].

[*If it is wished to embrace a service in general in the same character as the special service, here add*—That the petitioner is likewise heir of provision in general to the said C. D. under and by virtue of the said disposition and deed of settlement.]

May it therefore please your Lordship to serve the petitioner nearest and lawful heir of provision in special of the said deceased C. D. in the lands and others above described [*or* referred to], but always with and under the real burdens, &c. [*if any*] above written [*or* referred to] [*and where a general service is wished, add* —and likewise heir of provision in general of the said C. D. under and by virtue of the said disposition and deed of settlement]. [*See note to preceding style about separate extracts.*]

According to Justice, &c.

[*Signed by petitioner or his mandatory.*]

(9) Special Service as Heir of Tailzie and Provision.

Unto the Honourable the Sheriff of Chancery [*or* of the county of L.],

The Petition of A. D. [*designation*];

Humbly sheweth,—

That the late C. D. [*designation*] died on or about the day of in the year nineteen hundred and , last vest and seised in All and Whole [*describe or refer to the subjects as contained in the ancestor's infeftment*], conform to extract decree of special service in favour of the said C. D., as nearest and lawful heir of tailzie and provision in special of G. D. [*designation*], expede before the Sheriff of , and dated and recorded in Chancery on day of , and with warrant of registration thereon, on behalf of the said C. D., recorded in [*specify Register of Sasines, and date of recording*], but always with and under the conditions, provisions, and prohibitory, irritant, and resolutive clauses [*or* clause authorising registration in the Register of Tailzies, *as the case may be*] contained in a disposition and deed of entail granted by the deceased G. D. [*designation*], dated the day of , in favour of the deceased J. D. [*designation*], and the heirs-male of his body, whom failing the said deceased C. D. and the heirs-male of his body, whom failing the other substitutes therein specified, and which destination, conditions, provisions, and prohibitory, irritant, and resolutive clauses [*or* clause authorising registration in the Register of Tailzies, *as the case may be*], are herein referred to as at length set forth in the said disposition and deed of entail, which is recorded in the Register of Tailzies on the day of [*or in any other deed recorded in the Register of Sasines; and in every case where there are any real burdens, &c., refer to them as in style No.* (2), *p.* 623].

That the petitioner is the eldest son and heir-male of the body of the said C. D., and therefore nearest and lawful heir of tailzie and provision in special of the said C. D. in the lands and others foresaid, under and by virtue of the said disposition and deed of entail.

[*If general service is desired, add*—That the petitioner is likewise heir of tailzie and provision in general of the said C. D., under and by virtue of the said recorded disposition and deed of entail.]

May it therefore please your Lordship to serve the petitioner nearest and lawful heir of tailzie and provision in special of the said deceased C. D. in the lands and others above described [*or* referred to], but always with and under the conditions, pro-

visions, and prohibitory, irritant, and resolutive clauses [*or* clause authorising registration in the Register of Tailzies, *and, where there are such*, the real burdens, &c., *as the case may be*, all above written or referred to]. [*If general service also be desired, add*—and likewise heir of tailzie and provision in general of the said C. D.]

According to Justice, &c.

(10) Petition for Special Service by Next Heir of Entail where there has been a Contravention.

See Statute, 1685, *c.* 22. *The deed of entail and decree of declarator should be produced with the petition. If the deed of entail is dated on or after* 1*st October* 1858, *or in the case of burgage subjects*, 1*st October* 1860, *and does not contain prohibitory, irritant, and resolutive clauses, but contains a clause of registration in the Register of Tailzies, the reference to the clauses of the entail will be to the* "conditions, provisions, and clause of registration in the Register of Tailzies."

Unto the Honourable the Sheriff of Chancery [*or* of [*county*]],

The Petition of A. D. [*designation*];

Humbly sheweth,—

That the late C. D. [*designation*] died on or about the day of nineteen hundred and , last vest and seised in All and Whole [*describe or refer to the lands, &c.*], conform to [*narrate investiture, e.g.* charter of resignation under the union seal in favour of the said C. D., dated the , and sealed the , both days of eighteen hundred and , and instrument of sasine in his favour thereon, recorded in the Register of Sasines at , the day of eighteen hundred and]: But always with and under the conditions and provisions, and clauses prohibitory, irritant, and resolutive [*or as the case may be*], contained in a deed of entail granted by G. D. [*designation*] on the day of in favour of R. D. [*designation*], and the heirs-male of his body, whom failing the said C. D. and the heirs-male of his body, whom failing to E. D. [*designation*], and the heirs-male of his body, whom failing the other substitutes therein mentioned, and which conditions, provisions, and prohibitory, irritant, and resolutive clauses [*or as the case may be*], and destination to heirs, are herein specially referred to as at length set forth in the said deed

of entail, which is recorded in the Register of Tailzies at Edinburgh the day of eighteen hundred and [*or reference may be made to the conditions and destination as contained at length in a registered deed or instrument of sasine forming part of the progress under the entail, and in every case where there are real burdens, &c., refer to them*].

That on the death of the said C. D., F. D. [*designation*] made up titles to the said entailed lands and others, as heir-male of tailzie and provision to the said C. D., his father, upon which he for some time possessed the same.

That the said F. D. having committed an act of contravention of the prohibition of the said entail against selling the lands [*or otherwise as the case may be*], the petitioner, on the day of nineteen hundred and , obtained decree of declarator of irritancy against him before the Court of Session.

That the petitioner is the eldest son of the said E. D., now deceased, and by reason of the irritancy declared against the said F. D., who was the only son of the said C. D., the petitioner is thus the nearest lawful heir-male of tailzie and provision in special of the said C. D. in the lands and others foresaid.

[*If general service is desired, add*—That the petitioner is likewise heir of tailzie and provision in general of the said C. D. under and by virtue of the said recorded deed of entail.]

May it therefore please your Lordship to serve the petitioner nearest lawful heir-male of tailzie and provision in special of the said C. D. in the lands and others above described, but always with and under the conditions, provisions, and prohibitory, irritant, and resolutive clauses before referred to [and with and under the real burdens, &c. [*if any*], above written [*or* referred to]. *If general service be also desired, add*—and likewise heir of tailzie and provision in general of the said C. D.].

According to Justice, &c.

(11) Special Service of an Heir-Portioner in a pro indiviso Share.

Unto the Honourable the Sheriff of Chancery [*or* of [*county*]],

The Petition of A. D. [*designation*];

Humbly sheweth,—

That the late C. D. died [*narrate death and investiture of ancestor as in such of preceding forms as is applicable*].

[*Then narrate how the petitioner is the ancestor's heir*, e.g. That the

said C. D. never had any male issue [*or* left no male issue surviving him].]

That at his death his three daughters, J. D., M. D., and E. D. [*designations*], were his only surviving issue.

That the said E. D. died on or about the day of in the year nineteen hundred and , leaving an only child, the present petitioner.

That the said M. D. was never married, and died on or about the day of in the year nineteen hundred and .

That the said J. D. is still alive, and the petitioner is therefore heir-portioner and nearest lawful heir in special of the said C. D. in one-half share *pro indiviso* of the foresaid subjects.

[*If general service also be desired, add*—That the petitioner is likewise one of the two heirs-portioners in general of the said C. D.]

May it therefore please your Lordship to serve the petitioner nearest and lawful heir in special of the said deceased C. D. in one-half share *pro indiviso* of the subjects above described [*or* referred to], but always with and under the real burdens, &c., above written [*or* referred to]. [*If general service also be desired, add*—and likewise one of the two heirs-portioners in general of the said C. D.]

According to Justice, &c.

(12) Special Service as Heir of Provision in Trust.

Where there is a destination to trustees and to their successors in office, the title of such successors may be completed by service as heir or heirs of provision in special or general of the previous trustees, but always in trust to carry out the trust purposes (*Hare*, 1889, 17 *R.* 105).

Unto the Honourable the Sheriff of Chancery [*or* of [*county where lands are situated*]],

The Petition of A. B. [*designation*], surviving and accepting trustee of the late C. D. [*designation*];

Humbly sheweth,—

That the late E. F. [*name and designation of trustee to whom service is sought*] was the trustee acting under the aftermentioned trust-disposition and settlement of the said deceased C. D., and died on or about the day of nineteen hundred and , last vest and seised as trustee foresaid in All and Whole [*describe or refer to lands as in trustee's infeftment*], conform to notarial instrument in favour of the said E. F., recorded along with warrant of registration thereon on his

behalf in the Division of the General Register of Sasines for the county of , on the day of nineteen hundred and , but in trust always for the ends, uses, and purposes specified in the said trust-disposition and settlement, dated the day of eighteen hundred and , and recorded in the Books of Council and Session on the day of eighteen hundred and , whereby the said C. D. gave, granted, disponed, and conveyed the lands and others above described to and in favour of the said E. F., whom failing to the petitioner the said A. B., as trustees to act in succession for the ends, uses, and purposes specified in the said trust-disposition and settlement.

That the petitioner is now the sole surviving trustee of the said C. D., and as such is nearest and lawful heir of provision in special of the said E. F. as trustee foresaid, under and by virtue of the said trust-disposition and settlement and for the purposes therein specified.

May it therefore please your Lordship to serve the petitioner nearest and lawful heir of provision in special of the said E. F. as trustee foresaid in the said lands and others above described [*or* referred to], but in trust always as aforesaid for the ends, uses, and purposes set forth in the said trust-disposition and settlement.

According to Justice, &c.

(13) Special Service as Heir of Sole (*or* Last) Surviving Trustee.

Where there is no destination in the trust-deed or no conveyance in any deed of appointment of new trustees, the heir of the last survivor of the trustees named in the original deed may present a petition for service as nearest and lawful heir in special of the last surviving trustee, and then convey to new trustees (*M'Lean*, 1892, 19 *R.* 1043).

Unto the Honourable the Sheriff of Chancery [*or* of [*county where lands are situated*]],

The Petition of A. D. [*designation*];

Humbly sheweth,—

That the late C. D. [*name and design trustee to whom service is sought*] was sole [*or* last surviving] trustee acting under the aftermentioned trust-disposition and settlement of the deceased L. M. [*designation*], and died on or about the day of nineteen hundred and , last vest and seised as trustee foresaid in All and Whole [*describe or refer to lands as in trustee's infeftment*], conform to notarial instrument in favour of the said C. D. [*or* in favour of the said C. D.

and also of E. F. and G. H. [*designations*], both after mentioned], recorded along with warrant of registration thereon, on his [*or* their] behalf in the Division of the General Register of Sasines for the county of on the day of eighteen hundred and , but in trust always for the ends, uses, and purposes specified in the said trust-disposition and settlement, dated the day of eighteen hundred and , and recorded in the Books of Council and Session the day of eighteen hundred and , whereby the said L. M. gave, granted, and disponed the said lands and others to and in favour of the said C. D. [*or* the said C. D., E. F., and G. H., and the acceptors or acceptor, survivors and last survivor of them, *or otherwise in terms of the destination*].

[That the said E. F. resigned the trust, conform to minute of resignation by him, dated the day of eighteen hundred and ; and the said G. H. died on or about the day of eighteen hundred and .]

That by the forty-third section of the Conveyancing (Scotland) Act, 1874, it is enacted that "where a sole or last surviving trustee" [*quote the section*].

That the petitioner is the eldest son and nearest lawful heir of the said C. D., is of full age, and is entitled, under and by virtue of the before-recited provision of the Conveyancing (Scotland) Act, 1874, to be served nearest and lawful heir in special of the said C. D. in the lands and others foresaid, but in trust always for the ends, uses, and purposes specified in the said trust-disposition and settlement, and to the effect and subject to the provisions and qualifications specified in the forty-third section of the foresaid Act of Parliament.

May it therefore please your Lordship to serve the petitioner nearest and lawful heir in special of the said C. D. in the said lands and others above described [*or* referred to], but in trust always for the ends, uses, and purposes set forth in the said trust-disposition and settlement by the said L. M., dated (and recorded) as aforesaid, and under the conditions provided by the forty-third section of the Conveyancing (Scotland) Act, 1874.

According to Justice, &c.

(14) Special Service as Heir of Creditor in Recorded Bond and Disposition in Security from which Executors are Excluded

Unto the Honourable the Sheriff of Chancery [*or* of [*county*]],

The Petition of D. B. [*designation*];

Humbly sheweth,—

That the late A. B. [*designation*] died on or about the day of , last vest and seised in All and Whole [*describe or refer to the lands in terms of Schedule O of the Conveyancing Act of* 1874]; and that in real security of the whole sums of money—principal, interest, and penalties—contained in a bond and disposition in security, dated the day of , and with warrant of registration thereon, on behalf of the said A. B., recorded in the Division of the General Register of Sasines for the county of the day of , both in the year nineteen hundred and , for the sum of pounds sterling, granted by C. D. [*designation*] in favour of the said deceased A. B. and his heirs, excluding executors or assignees whomsoever [*or* in favour of the said A. B. and his executors or assignees whomsoever, but from which bond and disposition in security the executors of the said A. B. were excluded by minute of exclusion executed by him of date the , and recorded in the said Division of the General Register of Sasines the , both days of nineteen hundred and], conform to the said bond and disposition in security, dated and recorded as aforesaid [but always with and under the real burdens, conditions, provisions, and limitations specified in [*specify any deed or instrument containing real burdens, conditions, &c., at length, in terms of Schedule D of the Consolidation Act of* 1868]].

That the petitioner is the eldest son [*or state what other relationship or character the petitioner bears*] and nearest lawful heir in special of the said A. B. in the lands and others foresaid, in which the said A. B. was last vest and seised in security as aforesaid.

May it therefore please your Lordship to serve the petitioner nearest and lawful heir in special of the said deceased A. B. in the lands and others above described, and that in real security of the sums of money—principal, interest, and penalties—contained in the said bond and disposition in security [but always with and under the real burdens, conditions, provisions, and limitations (*if any*) above referred to].

According to Justice, &c.

NOTE.—*This style may be varied according to the different circumstances by adapting the preceding forms to the case of special service to a security. The heir's title under a decree obtained on the above petition will be completed either by registration of the extract decree itself with a warrant of registration thereon in the appropriate Register of Sasines, or by expeding and recording in like manner a notarial instrument.*

(15) Special Service of Widow to Terce.

Kenning to the terce is the ancient process by which a widow still makes effectual her right to one-third of the rents of her deceased husband's heritable estate in which he died infeft. It gives the wife a real right to her share of the rents, preferable to the infeftment of a singular successor deriving right from the husband's representatives. In the event of the widow's death before having drawn any part of her terce and without having served to it, her executors have no claim to the terce.

Lesser terce is the right of a second widow to one-third of the two-thirds of the rents remaining after deduction of the third payable to the first widow as terce. The right of the second widow is enlarged to a full third on the death of the first widow, or on the discharge of her claim.

The first step is an application for a brieve in Chancery in the following form :—

Note for Brieve of Terce.

Wanted a brieve directed to the Sheriff of the county of M., for serving B. [*designation*], relict of A. [*designation*], to be kenned to her terce.

Edinburgh .

D. W. S.,
Agent for the said B.

Brieve of Terce.

Georgius Quintus, Dei gratia, Britanniarum Rex, Fidei Defensor, Vicecomiti et Balivis suis de salutem.—Mandamus vobis et præcipimus, quatenus dilectæ nostræ B., relictæ quondam A., latrici præsentium, haberi faciatis rationabilem tertiam partem suam de Omnibus et Singulis terris et annuis reditibus, cum pertinen. quæ et qui fuerunt dicti quondam A., ejus mariti hæreditarie, infra baliam vestram, quas et quos de nobis tenuit in capite, et de quibus obiit ultimo vestitus et sasitus ut de feodo: Tantum inde facien. quod pro vestro defectu amplius inde justam quærimoniam non audiamus. Teste meipso apud Edinburgum die mensis regnique nostri anno , 19 . Vicecomiti et Balivis suis de M.

When the brieve has been obtained it is presented to the Sheriff of the county within which the lands lie, along with a petition in the following or similar terms :—

Unto the Honourable the Sheriff of M. (or his Substitute or Substitutes),

The Petition of
B. [*designation*], widow of A. [*designation*];

Humbly sheweth,—

That the petitioner has procured and produces herewith a commission from His Majesty's Chancery, dated and written , appointing your Lordship to have her served and cognosced to a just and reasonable terce of All and Sundry the lands and annual rents, with the parts and pertinents in which the said A., her husband, died last vest and seised, situated in the county of , and granting full power and authority to your Lordship to receive the said brieve, and to cause the same to be proclaimed, and to hold a Court or Courts of inquest for the trial of the same, and to grant warrant for summoning a sufficient number of fit persons to pass upon the said inquest, and generally to do everything in the premises which may be necessary or suitable, as the said commission in itself more fully bears.

That F. [*designation of heir*] is the eldest son [*or as the case may be*] and heir-at-law of the said deceased A., and P., Q., and R. [*designations*] are daughters [*or as the case may be*] and next of kin to the said deceased. In these circumstances the present application has become necessary.

May it therefore please your Lordship to appoint a certain time and place for the trial of the said brieve, and to grant warrant to officers of Court to proclaim the same at the Market Cross of [*the head burgh of the county*] in common form, and to summon, warn, and charge all persons having or pretending to have interest to attend the said inquest, and in special to serve the said brieve on the said F. and the said P., Q., and R. personally or at their respective dwelling-places, and to summon, warn, and charge them to compear before your Lordship, and also before the inquest to pass upon the trial of the said brieve, in the hour of cause, with continuation of days, to hear and see the said brieve duly and lawfully served, or else to object thereto if they or any of them see cause, with certification as effeirs; as also to grant warrant to summon a jury of good and faithful men, not less than fifteen in number, to pass upon the said inquest, and to authorise the clerk of Court, if required, to issue a list of jurymen, and also to grant warrant for citing witnesses to appear at said inquest, and to bear leal and soothfast witnessing on oath, in so far as they know, or as shall be

asked at them; or to do further or otherwise as to your Lordship shall seem proper.

According to Justice, &c.

In the process thus constituted the widow lodges a claim as follows:—

Honourable Persons, &c.,—I, B. [*designation*], widow of the deceased A. [*designation*], say unto your Wisdoms that I was lawfully married to the said deceased A., who died upon the day of , and was holden and reputed his lawful wife during my husband's lifetime: And that the said A. died last vest and seised in the fee of All and Sundry the lands and other heritages under written, viz. [*insert description of the subjects*].

Herefore I beseech your Wisdoms to find and declare that I was lawful wife of the said deceased A., and to serve and cognosce me to a just and reasonable terce or third part of the whole lands and others above specified, wherein my said husband died infeft and seised as said is; and to find that my right thereto commenced at the term of , being the first term after the death of my said husband, and will continue during my lifetime.

According to Justice, and your Wisdoms' Answer.

[*Signed by claimant.*]

Service vests the widow with a right of possession to the extent of one-third pro indiviso *with the heir. This right entitles her to an hypothec similar to that competent to a landlord.*

At one time the widow usually followed up her service by the process properly known as kenning to the terce. That is now in practice obsolete. It consisted of a division of the lands affected somewhat in the style of the old runrig lands, followed by delivery of sasine and the expeding of an instrument of sasine thereon.

3. General Service.

(1) Statutory Form.

Titles to Land Consolidation Act, 1868, *Schedule P.*

Form of Petition of General Service.

Unto the Honourable the Sheriff of [*specify the county, or say* "of Chancery"],

The Petition of A. B. [*here name and design the petitioner*];

Humbly sheweth,—

That the late C. D. [*here name and design the ancestor to whom service is sought*] died on or about the day of , and had at the time of his death his ordinary or principal domicile in the county of [*or* furth of Scotland, *as the case may be*]. [*In cases where the deceased died upwards of ten years before the date of the petition, and the petitioner cannot ascertain the place of the domicile, say* that the late C. D. [*here name and design the ancestor to whom service is sought*] died on or about the day of , but the petitioner is unable to prove at what place the deceased had his ordinary or principal domicile at the time of his death.]

That the petitioner is the eldest son [*or state what other relationship or character of heir the petitioner bears*] and nearest lawful heir in general of the said C. D. *If the service is as heir of provision, say* that the petitioner is the eldest son [*or state what other relationship or character of heir the petitioner bears*] and nearest lawful heir of provision in general of the said C. D., under and by virtue of a deed [*specify the deed of provision*] executed by E. F., dated the day of , *or otherwise describe the deed so as to clearly identify it, or, if the service is as heir of tailzie, say* that the petitioner is the eldest son [*or state what other relationship, &c., the petitioner bears*] and nearest and lawful heir of tailzie and provision in general of the said C. D., under and by virtue of a disposition and deed of entail granted by E. F., dated the day of , and recorded in the Register of Tailzies the day of , whereby the said E. F. conveyed the lands of M. to and in favour of J. K. [*here set forth the destination or such part thereof as may be deemed necessary, or say,* and the other heirs therein mentioned]; but always with and under the conditions, provisions, and prohibitory, irritant, and resolutive clauses [*or* clause authorising registration in the Register of Tailzies, *as the case may be*], contained in the said recorded deed of entail, and here referred to as at length set forth therein.

May it therefore please your Lordship to serve the petitioner nearest and lawful heir in general to the said C. D. [*or whatever other character of heir is sought to be established, here set it forth*].

According to Justice, &c.

[*Signed by the petitioner or his mandatory.*]

(2) General Service as Heir of Line.

Unto the Honourable the Sheriff of Chancery [*or* of [*county*]],

The Petition of A. B. [*designation*];

Humbly sheweth,—

That the late C. B. [*designation*] died on or about the day of nineteen hundred and , and had at the time of his death his ordinary or principal domicile in the county of [*or* furth of Scotland].

That the petitioner is [*state exact relationship, e.g.* the eldest son] and nearest lawful heir in general of the said C. B.

May it therefore please your Lordship to serve the petitioner nearest and lawful heir in general to the said C. B.

According to Justice, &c.

(3) Where the Ancestor has been Presumed Dead.

In such a case the narrative will commence—

That the late C. B. [*designation*] is presumed to have died on the day of nineteen hundred and , conform to decree of the Court of Session, Lord L., Ordinary, dated 19 , pronounced on a petition at the petitioner's instance.

Otherwise the petition will be in the ordinary form.

(4) General Service as Heirs-Portioners.

The last paragraph of the narrative will be—

That the said C. B. had no son, and the petitioners are his only daughters and his nearest lawful heirs-portioners in general.

The prayer will ask for service as "heirs-portioners in general."

(5) Where a Nearer Heir has Predeceased.

Unto the Honourable the Sheriff of Chancery [*or* of [*county*]],

The Petition of A. B. [*designation*];

Humbly sheweth,—

That the late C. B. [*designation*] died on or about the day of nineteen hundred and , and had at the time of his death his ordinary or principal domicile in the county of [*or* furth of Scotland].

That the said C. B. had only two sons, namely, the petitioner's elder brother D. B. and the petitioner. The said D. B. died on or about the

day of nineteen hundred and , without issue.

That the petitioner is thus the nearest lawful heir in general of the said C. B.

(6) General Service as Heir of Provision.

Unto the Honourable the Sheriff of Chancery [*or* of [*county*]],

The Petition of A. D. [*designation*];

Humbly sheweth,—

That the late C. D. [*designation of ancestor to whom service is sought*] died on or about the day of nineteen hundred and , but the petitioner is unable to prove at what place the deceased had his ordinary or principal domicile at the time of his death [*or as the case may be; see style* (2), *p.* 638].

That the petitioner is the younger and only brother of the said C. D., who was never married [*or as the case may be*], and is thus nearest lawful heir [*or* heir male] of provision in general of the said C. D. under and by virtue of a disposition [*or other deed*] executed by E. H. [*designation*], dated , whereby he disponed to the said C. D. and the heirs of his body, whom failing, to the petitioner and the other heirs therein mentioned, All and Whole the lands of M. and others therein described [*or as the case may be*].

May it therefore please your Lordship to serve the petitioner nearest and lawful heir [*or* heir male] of provision in general to the said C. D. under and by virtue of the said disposition [*or other deed*].

According to Justice, &c.

(7) Petition for General Service as Heir of Tailzie.

Unto the Honourable the Sheriff of Chancery [*or* of [*county*]],

The Petition of A. D. [*designation*];

Humbly sheweth,—

That the late C. D. [*designation of ancestor to whom service is sought*] died on or about the day of nineteen hundred and , and had at the time of his death his ordinary or principal domicile in the county of L. [*or as the case may be*].

That the petitioner is the eldest son and nearest and lawful heir male of tailzie and provision in general of the said C. D. under and by virtue of a disposition and deed of entail granted by E. F. [*designation*], dated the day of , and recorded in the Register of

Tailzies on the day of , both in the year eighteen hundred and , whereby the said E. F. conveyed the lands of X. and others therein particularly described [*or* referred to], to and in favour of G. D. [*designation*], and the heirs male of his body, whom failing, to the said C. D. and the heirs male of his body [*here set forth the destination or such part thereof as may be deemed necessary, or say*, and the other heirs therein mentioned]; but always with and under the conditions, provisions, and prohibitory, irritant, and resolutive clauses [*or* clause authorising registration in the Register of Tailzies, *as the case may be*] contained in the said recorded deed of entail, and here referred to as at length set forth therein.

May it therefore please your Lordship to serve the petitioner nearest and lawful heir male of tailzie and provision in general to the said C. D. under and by virtue of the said disposition and deed of entail.

According to Justice, &c.

(8) Petition for General Service as Heir of Provision in Trust.

Unto the Honourable the Sheriff of Chancery [*or* of [*county*]],

The Petition of A. B. [*designation*], surviving and accepting trustee of the late C. D. [*designation of truster*];

Humbly sheweth,—

That the said C. D. died on or about the day of , leaving a trust-disposition and settlement, dated [*and if recorded specify register and date of registration in the usual manner*], whereby he disponed, conveyed, and made over to and in favour of the now deceased E. F. [*designation*], whom failing, to the petitioner, the said A. B., as trustees to act in succession for the ends, uses, and purposes therein specified, his whole estate and effects therein described.

That the said E. F. accepted of the trust, and acted as trustee foresaid, and that he died on or about the day of nineteen hundred and , and had, at the time of his death, his ordinary or principal domicile in the county of [*or* furth of Scotland, *as the case may be*].

That the petitioner is now the sole surviving trustee of the said C. D., and as such is nearest and lawful heir of provision in general of the said E. F., as trustee foresaid, under and by virtue of the said trust-disposition and settlement, and for the purposes therein specified.

May it therefore please your Lordship to serve the petitioner nearest and lawful heir of provision in general to the said E. F., as trustee foresaid, under and by virtue of the said trust-disposition and settlement, but in trust always for the ends, uses, and purposes therein expressed.

According to Justice, &c.

4. Petitions for Completing Title under the Conveyancing Act of 1874 (s. 10).

(1) Petition by an Heir to Complete Title.

Unto the Honourable the Sheriff of the county of L. [*or* of Chancery],

The Petition of A. D. [*designation*];

Humbly sheweth,—

That the late C. D. [*designation*] died last vest and seised in All and Whole [*describe or refer to the subjects as these are described or referred to in the recorded deed or instrument in favour of the deceased*], conform to instrument of sasine [*or other recorded deed, as the case may be*] in favour of the said C. D., recorded [*or* dated and recorded, *specify Register of Sasines and date of recording, and, where there are any real burdens, conditions, or qualifications, here specify or refer to them as contained in some deed or instrument forming part of the progress of titles, and recorded in the Register of Sasines, thus:* but always with and under the real burdens, conditions, and qualifications specified in the said instrument of sasine recorded as aforesaid; *or otherwise as the case may be*].

That E. D. [*designation*], eldest son of the said C. D. [*or otherwise as the case may be*], and his nearest and lawful heir, succeeded to him in the said subjects, but died on the day of , unserved and uninfeft, and having only a personal right thereto.

That the said E. D. was succeeded by the petitioner, the said A. D., his son and only child [*or otherwise as the case may be*].

That the petitioner is nearest and lawful heir of the said E. D. in the said subjects.

May it therefore please your Lordship to find the facts above set forth proved, and that the petitioner is entitled to procure himself infeft in the foresaid subjects in terms of the Conveyancing (Scotland) Act, 1874 [*and where there are real burdens, &c., add,* but always with and under the real burdens,

conditions, and qualifications before specified *or* referred to]; and to decern.

According to Justice, &c.

[*Signed by the petitioner or his mandatory.*]

(2) Another Form of the Same.

Unto the Honourable the Sheriff of the county of L. [*or* of Chancery],

The Petition of A. B. [*designation*];

Humbly sheweth,—

That C. D. [*designation*] was last vest and seised in All and Whole, &c. [*here describe or refer to the subjects, and any real burdens, &c., as in the preceding form*].

That the said C. D., by disposition dated [*specify date*], conveyed the said subjects to E. F. [*designation*], who died without having been infeft therein.

That G. F. [*designation*], eldest son of the said E. F., is his heir in the said subjects, but has only a personal right thereto [*or* that G. F., eldest son of the said E. F., and his nearest lawful heir in the said subjects, died on the day of , unserved and uninfeft, and having only a personal right thereto].

That the said G. F., by disposition dated [*specify date*], conveyed the said lands to H. B. [*designation*].

That the said H. B. died on the day of , leaving no issue, and the petitioner is his only brother-german, and nearest and lawful heir in the said lands.

May it therefore please, &c. [*complete prayer as in the preceding form*].

(3) Petition to Complete Title by Disponee of Heir.

Unto the Honourable the Sheriff of the county of L. [*or* of Chancery],

The Petition of A. B. [*designation*];

Humbly sheweth,—

That the late C. D. [*designation*] died last vest and seised in All and Whole [*here describe or refer to the lands, specify title and date of recording, and if there are any real burdens, &c., specify or refer to them, all as shown in style No.* (1), *p.* 621].

That E. D. [*designation*], eldest son of the said C. D. [*or otherwise as the case may be*], is his nearest and lawful heir in the said lands, but has not been served and has only a personal right thereto [*or* that E. D.,

eldest son of the said C. D., and his nearest and lawful heir in the said lands, died on the day of , unserved, and having only a personal right thereto].

That the said E. D., by disposition dated [*specify date*], conveyed the said lands to the petitioner.

May it therefore please, &c. [*complete prayer as in style No.* (1), *p.* 622].

(4) Another Form of the Same.

Unto the Honourable the Sheriff of the county of L. [*or* of Chancery],

The Petition of A. B. [*designation*];

Humbly sheweth,—

That B. C. [*designation*] was last vest and seised in All and Whole [*as in style No.* (1), *p.* 621].

That the said B. C., by disposition dated [*specify date*], conveyed the said lands to C. D. [*designation*], who died on the day of , never having been infeft therein.

That the said C. D. had issue, viz., one son, A. D. [*designation*], and two daughters, E. D. and F. D. [*designations*].

That the said A. D. was never married, and predeceased his father. That the said E. D. and F. D. are heirs-portioners of the said C. D. in the said lands, but have only a personal right thereto [*or* were heirs-portioners of the said C. D. in the said lands, but died on the day of and day of respectively, unserved, and having only a personal right to the said lands].

That the said E. D. and F. D., by disposition dated [*specify date*], conveyed the said lands to the petitioner.

May it therefore please, &c. [*complete prayer as in style No.* (1), *p.* 622].

(5) Petition to Complete Title where an Intermediate Heir has been Served in General or in Special.

Unto the Honourable the Sheriff of the county of L.,

The Petition of A. D. [*designation*];

Humbly sheweth,—

That the late B. D. [*designation*] died last vest and seised in All and Whole [*here describe or refer to subjects*], conform to [*specify title, &c., as in style No.* (1), *p.* 621].

That upon the death of the said B. D. he was succeeded by E. D. [*designation*], his eldest son [*or as the case may be*], as his heir in the said

lands. That the said E. D. expede a special service as heir of the said B. D., conform to [*specify decree*], but died without being infeft thereon [*or* that the said E. D. expede a general service as heir of the said B. D., conform to [*specify decree*], but made up no further title].

That the said E. D. was succeeded by his eldest son G. D. [*designation*], who was his nearest and lawful heir in the said lands, but that the said G. D. died on the day of , unserved, and having only a personal right to the said lands.

That the said G. D. was succeeded by the petitioner, his eldest son, and heir in said lands.

May it therefore please, &c. [*complete prayer as in style No.* (1), *p.* 622].

5. Procedure in Services.

By the Consolidation Act of 1868, *sec.* 33, *it is enacted that, after publication of any petition for service has been made, and the* induciæ *have expired, it shall be lawful "to the Sheriff to whom such petition of service shall have been presented, by himself, or by the provost or any of the bailies of any city or royal or parliamentary burgh, or by any justice of the peace for any part of the United Kingdom wherever such justice of the peace may happen to be for the time, whether within the United Kingdom or abroad, or by any notary public, all of whom are hereby authorised to act as commissioners of such Sheriff without special appointment, or by any commissioner whom such Sheriff may appoint, to receive all competent evidence, documentary and parole, and any parole evidence so received shall be taken down in writing, according to the practice in the Sheriff Courts of Scotland existing prior to the first day of November* 1853, *and a full and complete inventory of the documents produced shall be made out, and shall be certified by the Sheriff or his commissioner aforesaid. . . ."*

Proof.

Proof in the Petition of A. B. [*designation*], for service as heir in special [*or* general, *as the case may be*], of the deceased C. B. [*designation*].

At the day of nineteen hundred and , in presence of E. F. [*designation*], one of His Majesty's Justices of the Peace for the county of L. [*or* one of the bailies of the city [*or* burgh] of E., *or* notary public in G.], authorised to act as commissioner for the Honourable the Sheriff of the county of L. [*or* of Chancery], under the Titles to Land Consolidation (Scotland) Act, 1868:

Compeared J. M. [*designation*], who, being solemnly sworn and interrogated, depones [*here prove the facts stated in the petition, in some such form as follows*]: I was acquainted with the said C. B. He died at , on or about the day of 19 [*add, in the case of a general service,* and had at the time of his death his ordinary or principal domicile in the county of]. The said A. B. is the eldest lawful son of the said C. B.—All which is truth, as the deponent shall answer to God.

[*Signed on each page by the deponent, and also by the commissioner, who appends his qualification on the last page of each deposition.*]

Each link in the chain must be accurately set forth. The second deposition is appended to the first one.

Also compeared Y. [*designation*], who, being solemnly sworn and interrogated, depones and concurs *in omnibus* with the preceding witness. All which is truth, as the deponent shall answer to God.

[*Signed by deponent and commissioner as before.*]

The second deponent should also sign each page of the leading deposition in which he concurs. The petitioner must instruct his particular averments by evidence appropriate thereto, e.g. (1) *date of deceased's death, by production of death certificate or other evidence to satisfaction of Sheriff;* (2) *the domicile of deceased, subject to terms of sec.* 34 *of the Consolidation Act;* (3) *the infeftment of the ancestor, by producing per inventory* (*which will be signed by commissioner*) *the recorded deed in favour of the ancestor, and, if necessary, the warrants for the infeftment* (*as in the case of an instrument of sasine*)*; and* (4) *the relationship of the petitioner to the deceased, by accurately setting forth and proving by two witnesses, unless it is of such a date as cannot be instructed by living witnesses, in which event it should be proved by retours, marriage contracts, or other authentic writings. If heir of provision, the deed or deeds under which he claims must also be set forth.*

Servitude.

1. Declarator of Right of Way.

(*See* DECLARATOR, No. 6.)

2. Declarator of No Right of Way.

(*See* DECLARATOR, No. 7.)

3. Declarator of Access.

(*See* DECLARATOR, No. 13.)

4. Declarator "Altius non tollendi."

(*See* DECLARATOR, No. 14.)

5. Declarator Non edificandi.

Sheriffdom of at .

A. B. [*designation*], proprietor of the shop and back premises at No. Street, , *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For declarator that pursuer has, in virtue of his titles as proprietor of said shop and back premises, a servitude against building on the ground behind his said premises belonging to defender, and for interdict against defender building thereon.

Therefore the pursuer craves the Court—

To find and declare that [*describe or refer to the servient tenement*] is burdened with a servitude against any building or erection being made thereon behind or *ex adverso* of the back wall of the shop and back premises belonging to the pursuer, and forming No. Street, : To interdict the defender from building or making any erection of any kind on the said area of ground, in contravention of the said servitude or restriction: To grant interim interdict; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is a hairdresser, and carries on business at No. Street, . The defender is a cabinetmaker and builder, and carries on business at No. Street there.

2. By disposition, dated , and recorded in the Division of the General Register of Sasines applicable to the county of , 19 , E. F. [*designation*] conveyed to the pursuer the said shop and back premises No. Street. The said disposition, which is herewith produced, conveyed to the pursuer no part of the ground behind his said premises, but it contains a clause declaring that [*quote clause imposing restriction of building behind pursuer's property*]. The whole of the tenement forming Nos. and Street was

built by the said E. F., from whom it was, with the exception of No. , purchased by the defender.

3. The defender, about the year 19 , converted the shop No. Street into an office for carrying on his business of a cabinet-maker and builder, and at the same time for that purpose erected workshops and storerooms on the background [*ex adverso*] of No. Street. In the month of last the defender applied to the Dean of Guild Court for a lining for the erection of an extension of his said workshops on the background behind the pursuer's premises, No. Street. The pursuer opposed this application, and it was sisted to allow the pursuer to raise the present action to vindicate his rights over the said background.

4. The hairdressing saloon behind the pursuer's said premises is lighted by two windows opening on the background on which, within ten feet from the said windows, the defender now proposes to build, and if the said buildings are erected, the light in the saloon will be so diminished as to render it quite unsuitable for the pursuer's business.

PLEAS IN LAW.

1. The pursuer having, in virtue of his titles, a servitude against building over the ground behind his premises belonging to the defender, is entitled to declarator and interdict as concluded for.

2. The defender having, in breach of the servitude in the pursuer's favour condescended on, attempted to build on the ground over which it extends, the pursuer is entitled to interdict as concluded for.

6. Declarator of Servitude of Passage by Implied Grant.

Sheriffdom of at .

A. B. [*designation*], proprietor of the stable and yard behind Nos. and Street, K., *Pursuer*,

against

C. D. [*designation*], proprietor of and Street, K., *Defender*.

The demand of the pursuer is—

For declarator that pursuer possesses a servitude of passage from said stable and yard by the lane bounding defender's property at No. Street, K., to the said Street, and for interdict against defender from interfering with pursuer's right of passage thereby.

Therefore the pursuer craves the Court—

To find and declare that the pursuer has a servitude of passage for horses, carts, and other wheeled vehicles from the said stables and yard, by the road or lane therefrom along the western boundary of the defender's property at No. Street aforesaid to the said Street: To interdict the defender, by himself or others, from interfering with the pursuer, his family and servants, in the peaceable enjoyment of the said right of passage: To grant interim interdict; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is a carting contractor and coal merchant in K., and is proprietor of the stable and yard behind Nos. and Street there. The defender is a grocer there, and is proprietor of the said Nos. and Street.

2. Prior to the year 19 the whole of the area occupied by Nos. and Street and the pursuer's property behind the same was owned and occupied by C. G. [*designation*]. In the said year the pursuer's father purchased from the said C. G. the part of the said area now belonging to the pursuer, with the stables and other erections thereon. The remainder of the said area, with the houses, Nos. and Street, were subsequently sold by the said C. G. to the defender.

3. The pursuer's said property had at the time when it was purchased by the pursuer's father, and has ever since, possessed two accesses, one a lane three feet six inches in width to Street, which is only practicable for foot passengers, and the other, the passage through the defender's property to the Street, which is of an average breadth of between seven and eight feet, and which was at the time of the said purchase, and still is, the only road by which carts and other wheeled vehicles can reach the pursuer's premises. The said last-mentioned access is necessary to the enjoyment of the pursuer's said premises, and a right to it was impliedly included in the disposition by the said C. G. to the pursuer's father.

4. [*Narrate the defender's interference with the access and pursuer's remonstrances.*]

PLEAS IN LAW.

1. The pursuer having, in virtue of the conveyance in favour of his predecessor as condescended on, an implied grant of the access mentioned in the prayer of the petition, is entitled to decree of declarator thereof as concluded for.

2. The defender having interfered with the pursuer's right of access as condescended on, the pursuer is entitled to interdict as craved.

7. Declarator of Freedom from Servitude of Kirk Road.

Sheriffdom of at .

A. B. [*designation*], proprietor of the lands and estate of X. in the parish of Y. and county of Z., *Pursuer*,

against

C. D. [*designation*], tenant of the farm of T. in said parish, *Defender*.

The demand of the pursuer is—

For declarator that pursuer's said lands are free of any servitude of footway or "kirk road" leading over them to the parish church of Y., and for interdict against defender from trespassing on said lands.

Therefore the pursuer craves the Court—

To find and declare that the said lands of X. are free of any servitude or right of footway or "kirk road" leading over the said lands or any part thereof to the parish church of Y.: To interdict the defender from entering or trespassing upon the said lands under pretence of such servitude: To grant interim interdict; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is proprietor of the lands and estate of X. in the parish of Y. The defender is tenant of the farm of T. in the said parish.

2. The parish church of Y. was, prior to the year 19 , situated close to the north-western boundary of the pursuer's said estate, and the parishioners from the farm of T. and other farms lying to the south of the said estate were, by tolerance of the pursuer and his authors and predecessors, allowed to go to the said parish church through or along the margin of the M. and N. fields on the farm of R. on the said estate of X.

3. In the year 19 the said parish church of Y. was transported to its present site, close to the village of Y., and near the north-eastern corner of the estate of Y. Since the said transference the parishioners on the farm of T. and other farms to the south of the said estate had no reason for using the said road to the parish church. The pursuer's father, who was then in possession of the estate, accordingly withdrew

the permission to use the said road, and until recently its use was given up.

4. Within the last few years, however, the defender, on the pretext that he is entitled as a matter of right to a servitude of footway or "kirk road" through the pursuer's said lands, has on various occasions, both alone and in company with others, trespassed thereon. And as he in answer to the pursuer's remonstrances persists in the assertion of the existence of the servitude claimed, the pursuer has been forced to raise the present action.

5. The distance from the defender's farm of T. to the parish church of X. by the road from to X. is yards, and by the alleged servitude road it is not less than yards. The said alleged servitude road is thus longer than the public road, and is not either a necessary or convenient road to the parish church.

PLEAS IN LAW.

1. The defender never having had any right to the servitude of way or "kirk road" claimed, the pursuer is entitled to declarator as concluded for.

2. The alleged servitude claimed being merely a servitude of necessity and being no longer necessary, the defender has no interest to oppose the conclusions of the petition.

3. The defender having trespassed on the pursuer's lands as condescended on, the pursuer is entitled to interdict as craved.

Set and Sale.—*See* SHIPPING, No. 19.

Sewer.—*See* PUBLIC HEALTH ACTS; REPARATION, No. 9 (2).

Sheep.

1. For Damages for Sheep-worrying.

NOTE.—*The provisions of* 26 *&* 27 *Vict. c.* 100 *and of the Dogs Act of* 1906 *will be kept in view, the first of which enacts that in any action brought against the owner of a dog for damages, in respect of injury done by such dog to sheep or cattle, the pursuer need not prove a previous propensity of such dog to injure sheep or cattle; and the latter of which pro-*

vides that anyone who harbours or permits a dog to reside with him is deemed to be its owner.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For payment by the defender to the pursuer of £ as the value of sheep destroyed by a dog belonging to defender [*or* which defender permitted to reside with him] on 19 .

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and expenses.

CONDESCENDENCE.

1. The pursuer is a tenant of the farm of , in the parish of X. The defender is [*designation*].

2. On the night of Monday, the day of 19 , or morning of the succeeding day, sheep belonging to the pursuer were worried or destroyed in Field on the said farm of , by a dog belonging to or permitted to live with the defender.

3. The sheep so destroyed were [*describe them*], and their value was not less than £ , the sum sued for.

4. The defender has been applied to by the pursuer to make reparation for the loss of the said sheep, but he declines to do so, and this action has thus been rendered necessary.

PLEA IN LAW.

The said sheep having been destroyed by a dog belonging to or permitted to live with the defender, the defender is liable to the pursuer for the loss thereby incurred by him.

2. For Warrant to Sell Stray Sheep.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*.

The demand of the pursuer is—

For warrant to sell Cheviot ewes found straying on the pursuer's farm.

Therefore the pursuer craves the Court—

To appoint this petition to be intimated and advertised as the Court may think fit; and thereafter, failing any person appearing within such time as the Court may fix to claim the Cheviot ewes marked [*specify these*] found straying on the pursuer's farm of , to grant warrant to the pursuer to sell the same by public roup, and to apply the proceeds of the sale thereof in payment of the expenses incurred by the pursuer in keeping and selling the said sheep, including the expenses of this application and of the procedure to follow hereon; and to consign the balance, if any, in the hands of the Clerk of Court.

CONDESCENDENCE.

1. On or about 19 the petitioner found five Cheviot ewes straying in a field on the farm of tenanted by him. The said ewes were marked as follows [*specify marks*].

2. The petitioner has made diligent inquiry, and inserted an advertisement in the *X. Advertiser*, of date the 19 , a copy of which is herewith produced. No person, however, has appeared to claim the said sheep, and they are still on his said farm. In these circumstances it is necessary for the petitioner to apply to the Court for a warrant to sell the said sheep.

PLEA IN LAW.

The petitioner being unable to find the owner or person entitled to the custody of the said sheep, warrant of sale should be granted as craved.

Sheriff-Officer, Petition for Admission of.

Such a petition cannot in any sense be described as an "action," and does not therefore fall within the provisions of rule 1 *of the Act of* 1907. *As, however, there does not appear to be anything in the Act which prevents the application being framed in the usual way, an alternative form is subjoined.*

Unto the Honourable the Sheriff of ,

The Petition of

A. B., residing at No. X. Street, ;

Humbly sheweth,—

That the petitioner desires to be admitted a sheriff-officer before your Lordship's Court.

That he has with that object studied the forms and procedure connected therewith, and now desires to be examined with a view to his admission to the said office.

May it therefore please your Lordship to examine the petitioner as to his qualifications for the office of a sheriff-officer, or to remit to a procurator or procurators of your Lordship's Court to do so, and to report; and on the petitioner being found qualified, to admit him to act as a sheriff-officer within the county of , and to find him entitled to the fees and emoluments effeiring to the office, the petitioner always finding caution acted in your Lordship's books for the faithful administration of the said office.

According to Justice.

or

Sheriffdom of at .

A. B., X. Street, , *Pursuer.*

The demand of the pursuer is—

For admission as a sheriff-officer.

Therefore the pursuer craves the Court—

To examine, &c. [*as above*].

Shipping.

1. For Damages to Ship by Defective Harbour.

(*See* HARBOUR.)

2. For Damages to Quay by Ship.

(*See* HARBOUR.)

3. For Damages for Failure to Deliver Ship within Contract Time.

(*See* PAYMENT, No. 9.)

4. For Damages for Personal Injury and Injury to a Horse while Embarking.

(*See* REPARATION, No. 12 (3).)

5. For Damages for Failure to Implement Charter-Party.

(*See* REPARATION, No. 6 (2).)

6. For Damages for Illegal Arrestment of Ship.

(*See* ARRESTMENT, No. 7.)

7. For Damages for Collision at Sea.

Sheriffdom of at .

A. B., shipowner, , owner of the s.s. of ,
Pursuer,

against

C. D., shipowner, , owner of the s.s. , of ,
Defender.

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as loss and damages sustained by the pursuer in consequence of the collision of defender's said steamer with pursuer's said steamer in Channel, off the , on 23rd November 19 , owing to the fault or negligence of those in charge of defender's steamer.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and with expenses.

CONDESCENDENCE.

1. On 23rd November 19 , shortly before three o'clock A.M., or about that time, while the pursuer's steamer, , was coming up Channel, and about mid-channel, off the , in prosecution of her voyage from , on the river , bound for with a cargo of meat, meal, and bone-meal in bags, she was run into and struck on the stem and bow by the defender's said steamer, whereby the had her stem and cutwater broken and carried away, her planks on the bow stove in and damaged, her gear torn and destroyed, and she was caused to make a great deal of water.

2. After the said collision the defender's said steamer did not come to the assistance of the .

3. After the said collision the stood for the land on the Scottish coast till she fell in with a tug steamer, which, on account of her damaged condition, was engaged to tow her to her destination. After the wreck of the spars, sails, and rigging at the bow was cleared away, and such temporary repairs were effected as were possible, the tug steamer took the in tow and towed her to , where she arrived on the night of the day on which the collision occurred.

4. In consequence of the said collision the said will require to go into dock for repairs, and during the execution of such

repairs, she will be prevented from taking new employment or setting out on a new voyage.

5. The loss and damage suffered and sustained, and to be suffered and sustained by and through the said collision, will not be less than the sum of £ sterling.

6. The said improperly neglected to keep clear of the , and improperly neglected to ease her engines, and to stop and reverse her engines in good time. The said collision was occasioned solely by and through the violation of the rules of navigation, and the negligence, mismanagement, and fault on the part of those on board and in charge of the said steamer at the time, for whom the defender is responsible.

7. At the time of the said collision the pursuer's steamer, , had her lights properly set and burning brightly, and a good look-out was being kept on board of her.

8. The pursuer has requested defender to pay him the said sum of £ , but the defender refuses or delays to do so.

Pleas in Law.

1. The pursuer having suffered loss and damage owing to the fault or negligence of defender, or of those for whom he is responsible, is entitled to reparation therefor, with expenses, as craved.

2. The sum concluded for being moderate and reasonable in the circumstances, decree therefor should be granted as craved.

8. By Holder of a Bill of Lading against Shipmaster for Damages to Cargo.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D., Street, , master of the s.s. of , *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as damages sustained by the pursuer in consequence of the deterioration of 500 quarters of wheat in bags belonging to pursuer, and shipped on board said ship in good order and condition on 20th July 19 , conform to bill of lading of said date signed by defender, said deterioration being due to defender's fault or negligence.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and with expenses.

CONDESCENDENCE.

1. By bill of lading, dated at the 20th day of July 19 , made and granted by the defender, he acknowledged to have been shipped by the pursuer, in good order and well conditioned, on board of defender's said vessel, 500 quarters of wheat in bags, which said cargo the defender became bound to deliver to the pursuer, or his assignees, in the same good order and well conditioned, at the port of , on payment of a certain freight therein stipulated.

2. The defender arrived at the said port of on or about 25th July 19 , and proceeded to discharge the said cargo of wheat, but in place of the same being in that good order and condition in which it was shipped, the said wheat proved to be heated and in a greatly damaged state, by the admission of water or otherwise, through fault of the defender or his servants, to the great loss, injury, and damage of the pursuer. The pursuer accordingly refused to accept delivery of the said wheat.

3. The defender is liable to the pursuer in reparation and damages for the loss thus sustained by him, which cannot be estimated at less than £ sterling.

4. The pursuer has required the defender to pay the said sum, but he refuses, or at least delays, to do so.

PLEAS IN LAW.

1. The pursuer having sustained damages as condescended on through fault of the defender, he is entitled to reparation as craved.

2. The sum sued for being fair and reasonable, decree therefor should be pronounced as craved.

9. For Detention of Foreign Ship.

(*Under sec.* 688 *of the Merchant Shipping Act*, 1894.)

Sheriffdom of at .

A. B., master of and as such representing the owners of the steamship *X.* of M., presently in the harbour of D., *Pursuer.*

[*If the owners of the offending vessel are known, they should be called as defenders, but the petition is evidently assumed to be dealt with very summarily and on an* ex parte *application.*]

The demand of the pursuer is—

For warrant to detain and to dismantle the steamship *R.* of G. till the owner, master or consignee thereof satisfies or finds [security for the claim of the pursuer, amounting to £ for the injury done to said steamship *X.* of M., on 19 , by collision in the [*place of collision*].

Therefore the pursuer craves the Court—

To ordain any officer of Customs or other officer appointed by the Court to detain the steamship *R.* of G., presently lying in the harbour of L., until the owner or owners, master or consignee or consignees thereof, has made satisfaction in respect of the injury done by the said ship to the said steamship *X.* of M., on 19 , in the [*place of accident*], or until he or they shall give security to the satisfaction of the Court for the due payment of any sums to which pursuer may be judicially found entitled in respect of the said injury, and for the expenses of this process; and also to grant warrant to officers of Court to pass on board said ship, and to dismantle her by removing her sails, rudder, and anchors, or otherwise; and to charge all harbour-masters, officers of Customs, or others whom it may concern, to assist said officers of Court in putting said warrant into execution.

CONDESCENDENCE.

1. The pursuer was at the time of the occurrence aftermentioned, and still is, master of the said steamship *X.* The said ship is the property of Messrs. J. & D. R. of M., who are subjects of His Majesty King George the Fifth. The said steamship *R.* is a foreign ship, and is at present lying in the harbour of L., which is within the jurisdiction of the Court.

2. Between 7 and 8 A.M. on 19 , while proceeding up the in charge of a licensed pilot and with the tug *M.* of L. towing ahead, and the tug *N.* of L. assisting astern, the said steamship *X.* was run into by the said steamship *R.*, which was proceeding down the river under her own steam.

3. At the time of the said collision [*narrate the facts showing that the fault rested wholly with the* R.].

4. In consequence of the said collision the *X.* sustained serious damage [*give details*]. In order to repair the said damage, it will be necessary to dry-dock the *X.* for repairs. The said collision was due solely to the misconduct or want of skill of the master or mariners of the *R.*, and in no way attributable to the petitioner or those in charge of the *X.*

5. The *R.* sustained no serious damage in the said collision. She is at present loading a cargo of in the harbour of L., and intends, as the petitioner believes and avers, to sail on the current on a voyage to G. The pursuer desires to recover damages in respect of the injuries caused to the *X.* by the said collision, but he believes and avers that he will be unable to obtain satisfaction therefor, unless he obtains from the Court an order for the detention of the *R.* in terms of the 688th section of the Merchant Shipping Act, 1894, as concluded for.

PLEA IN LAW.

The *X.* having been injured by the misconduct or want of skill of the master or mariners of the *R.*, the petitioner is entitled, in terms of the Merchant Shipping Act, 1894, to warrant of detention as craved.

10. For Payment of an Account for Repairs against Shipowners whose Ship has been Arrested Juris. fund. causa.

Sheriffdom of at .

A. B., ship carpenter, Street, , *Pursuer*,

against

C. D., 245 Broadway, New York, shipowner, owner of the s.s. *X.* of Y., subject to the jurisdiction by arrestment of said ship, *jurisdictionis fundandæ causa*, *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of £ , the amount of an account for repairs executed by pursuer upon defender's order upon said ship, conform to account attached.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and with expenses.

CONDESCENDENCE.

1. The pursuer, who is a ship carpenter at , was employed by E. F., the master, and as such representing the owner of the said ship, presently lying in Harbour, to make certain repairs upon and furnishings to the said vessel. These repairs were duly executed on, and the furnishings supplied to, the said vessel by pursuer as detailed in the attached account commencing and ending 19 .

2. The pursuer duly rendered the said account to the defender, but he refuses or delays to pay the same.

PLEA IN LAW.

The pursuer having executed said repairs on and supplied said furnishings to said ship on the order of the defender or of the master for whose acts he is responsible, is entitled to payment therefor, with expenses, as craved.

11. Payment of Advances to Seaman's Wife.

(*See* RELIEF, No. 7.)

12. Payment of Demurrage.

(*See* PAYMENT, No. 7.)

13. Payment of Freight.

NOTE.—*At common law the shipowner has a lien over the goods on board his ship for the freight, but the common-law remedies are largely supplemented by the provisions of the Merchant Shipping Act*, 1894.

Special provision is made by that Act (*sec.* 492 et seq.) *with regard to storage of goods, subject to the lien for freight. The shipowner may intimate by letter to the storekeeper or wharfinger with whom the goods are stored, the amount of his claim, and that the goods are to remain subject to his lien for freight. The consignee, if he then wishes delivery of the goods, must deposit with the storekeeper the amount claimed by the shipowner, and within fifteen days must also intimate to the storekeeper how much, if any, of the shipowner's claim he admits. The storekeeper then pays to the shipowner the amount admitted, and continues to hold the balance. Failing the consignee making the intimation within the fifteen days, the whole deposit is paid over to the shipowner. The shipowner has thirty days from the notice in which to begin legal proceedings against the owner of the goods for the recovery of the balance. At the end of the thirty days, unless legal proceedings have been begun, and notice thereof been given to the storekeeper, the latter must repay the balance to the owner of the goods.*

If the lien is not discharged, and no deposit made, the warehouseman may, and if required by the shipowner shall, at the expiration of ninety days from the time when the goods were placed in his custody, sell the goods by public auction. In the case of perishable articles the warehouseman may sell them at any time he in his discretion thinks fit. Provision is made for the advertisement of the sale and for intimation being made to the owner of the goods.

Where Amount Claimed by Shipowner has been Deposited.

(*Under secs.* 495 *and* 496 *of the Act.*)

Sheriffdom of . at .

A. B. [*designation*], registered owner of the steamship *X.*, *Pursuer*,

against

C. D. [*designation*], *Defender.*

The claim of the pursuer is—

For payment by the defender to the pursuer of £ , being (1) the balance of freight claimed by pursuer and due by defender under charter-party dated and deposited with T. [*designation*], to remain under pursuer's lien for the said freight; and (2) the expenses and charges incurred by pursuer in connection with the landing and storing of the cargo shipped at R. under said charter-party, and conform to bills of lading dated .

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ with interest from : To authorise T., storekeeper, M. Street, Z., to make payment to the pursuer of the sum of £ deposited with him by the defender on or about , and to the pursuer to uplift and apply the same towards payment of the said sum of £ ; and to find the defender liable in expenses.

Condescendence.

1. The pursuer is the registered owner of the ship *X.* of Y. The defender is , and carries on business at .

2. By charter-party, dated 19 , entered into between , as agent of the pursuer, and the defender, it was *inter alia* agreed [*set out provisions of charter-party as to voyage and payment of freight*].

3. In terms of said charter-party, the said vessel proceeded to the port of R., where there was shipped on board of her bales of , conform to bills of lading, dated 19 , copies of which are herewith produced. The freight on the said cargo amounts to £ .

4. Thereafter the *X.* on 19 left R., bound for Z., where she arrived on 19 . On her arrival at Z. the said cargo was claimed by the defender, who, however, declined to pay the said sum of £ for freight thereof [*give reasons for refusal*].

5. The master of the *X.* accordingly ordered the said cargo of to be landed and stored in . At the time of landing, he on behalf of the pursuer gave notice to T. [*the storekeeper*], that the said cargo was to remain under the pursuer's lien for freight to the amount of £ .

6. On or about 19 the defender deposited with the said T. the sum of £ , being the amount of freight claimed by the pursuer. By letter, dated 19 , addressed to the said , the defender intimated that he admitted the pursuer's claim to the extent of £ , and directed him to retain the balance, amounting to £ . The said T. on 19 , in accordance with the instructions contained in the said letter, paid the said sum of £ to the pursuer, and now retains the said balance of £ .

7. The expenses and charges incurred by the pursuer in connection with the landing and storing of the said cargo amount to £ . These charges, together with the balance of the freight claimed by the pursuer, amount to £ , which is the sum sued for. Pursuer has repeatedly applied to the defender to pay this amount, but he refuses to do so, and the present action has thus been rendered necessary.

PLEAS IN LAW.

1. The sum sued for being justly due and resting-owing by the defender to the pursuer, decree should be granted as concluded for, with interest and expenses.

2. The sum of £ having been deposited in security *pro tanto* of the sum sued for, warrant to uplift the same should be granted as craved.

14. Payment of Sum in Marine Policy.

(*See* PAYMENT, No. 12.)

15. Payment of Seaman's Wages.

(*Under sec.* 164.)

Sheriffdom of at .

A. B. [*address*], lately seaman on board the steamship *X.* of G., presently lying in the harbour of L., *Pursuer*,

against

C. D., master of the said ship, and as such representing the owners thereof, *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as balance of wages due to the pursuer as seaman on board said ship from till .

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from , and expenses. [And to grant warrant, &c.]

CONDESCENDENCE.

1. The pursuer was engaged by the defender at M., on or about 19 , as ordinary seaman on the British ship *X.* of G., for a voyage from M. to Y., and back to a final port of discharge in the United Kingdom. The pursuer's wages were to be £ per month.

2. In terms of the said engagement, the pursuer joined the said ship on or about the 19 , and duly served as an ordinary seaman on board the said ship from that date till 19 , when he was discharged on its arrival at L. The wages due to the pursuer for the said period of months and days amount to £ , from which sum there fall to be deducted advances of £ made to the pursuer, leaving a balance still due to him of £ , being the sum sued for.

3. The defender refuses or delays to make payment of the said balance, and this action is thus necessary.

PLEA IN LAW.

The wages claimed having been earned by the pursuer in terms of the agreement condescended on, he is entitled to decree therefor as concluded for.

16. For Warrant to Bring into Harbour and Dismantle a Vessel Arrested on the Dependence of a Sheriff Court Action.

Sheriffdom of at .

A. [*designation*], *Pursuer*,

against

B. [*designation*], owner [*or* part owner, *or* master] of the ship *X.* of Y., presently lying in , under arrest at pursuer's instance, *Defender*.

The demand of the pursuer is—

For warrant to bring and moor said ship in Harbour, and there dismantle her.

Therefore the pursuer craves the Court—

To grant warrant to officers of Court and their assistants to pass on board the said ship and to raise her anchor or anchors, and bring her to and moor her in safety in or at the harbour of , and there to dismantle the said ship or vessel, and to take her sails, rudders, and anchors until sufficient caution and surety be found acted in the Books of Court that the said ship or vessel shall be made furthcoming to the pursuer as accords of law.

CONDESCENDENCE.

1. The pursuer is a ship-chandler in . The defender is master of the ship *X.* of Y., now lying in , and as such master represents the owner or owners of said ship.

2. Upon 19 the pursuer raised an action against the defender in the Sheriff Court of at for payment of an account for furnishings and stores for the said ship, amounting to £ , with interest thereon at £5 per cent. per annum from the date of citation in said action till payment, and with expenses. The pursuer also prayed the Court for warrant to arrest on the dependence of the said action, *inter alia*, all ships and shares of ships, barques, boats, and other maritime subjects belonging to the defender.

3. On the said date the Sheriff-Substitute of at granted warrant to arrest in terms of the said prayer. In virtue of the said warrant, the pursuer on the same day caused the said ship, the *X.*, then lying in to be lawfully fenced and arrested, conform to execution of arrestment herewith produced.

4. Notwithstanding the said arrestment, the said ship is, as the pursuer believes and avers, about to sail for , or elsewhere abroad, and the pursuer is thus in danger of losing the benefit of his said arrestment, unless the said ship or vessel be dismantled and so prevented from sailing.

5. In these circumstances the pursuer finds it necessary to apply to the Court for warrant to dismantle the said ship or vessel, and for that purpose to first bring her into a safe and convenient harbour.

PLEA IN LAW.

The pursuer having lawfully arrested the said ship, is entitled to obtain a warrant to have her brought into a safe harbour and dismantled.

17. To Sell Arrested Ship.

Sheriffdom of at .

A. [*designation*], *Pursuer*,

against

B. [*designation*], [owner and] master of the ship *X.* of Y., presently lying in the harbour of G. under arrest at pursuer's instance, *Defender*.

The demand of the pursuer is—

For warrant to sell the said ship for payment of £ due by the defender for goods and stores supplied to him by the pursuer, and the expenses of this process, conform to decree of this Court. dated 19 .

Therefore the pursuer craves the Court—

To grant warrant to sell the said ship and her boats, furnishings, and appurtenances by public roup, and after such intimation as the Court may direct: And to ordain the proceeds of sale, after deducting the expense of arrestment and of the sale and of the other procedure to follow hereon, and of all other preferential charges, to be made furthcoming to the pursuer, or at least as much thereof as will completely satisfy and pay him—(1) The sum of £ sterling, with interest from till paid; and (2) the sums of £ sterling of expenses of process and dues of extract; all conform to extract decree from the Sheriff Court Books of at , dated ; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuer is a ship's furnisher in G. The defender is owner and master of the ship or vessel *X.* of Y., presently lying in the port or harbour of G. On 19 the pursuer raised an action in this Court against the defender for the sum of £ sterling for goods and stores furnished by him to the defender, with interest thereon at 5 per cent. from the date of citation until paid, and with expenses. On the pursuer obtained a deliverance thereon granting, *inter alia*, warrant to arrest on the dependence.

2. On 19 T., sheriff-officer in , in virtue of said warrants, cited the defender in said action, and also arrested the said ship or vessel *X.* of Y., with her boats, furniture, and apparelling, on the dependence of the said action. The execution of said arrestment is herewith produced.

3. In said action the pursuer obtained in the said Sheriff Court decree against the defender for the said sum of £ , with interest as concluded for, from 19 , together with the sum of £ of expenses and the dues of extract, all conform to extract decree herewith produced and referred to.

4. No part of the sums contained in said decree has been paid to the pursuer, and he now desires to have the said ship sold for satisfaction of the said debt.

PLEA IN LAW.

The pursuer having arrested the said ship on the dependence of the said action, and having obtained decree therein for the sums libelled, is entitled to obtain warrant to sell as craved.

18. Sale of Ship under Bottomry Bond.

NOTE.—*Owing to the facilities now existing for communication and the transmission of funds between a master and the owners of a vessel, bonds of bottomry have become comparatively rare in practice. Such bonds by owners are now practically unknown, as funds can more readily and cheaply be obtained either on the personal credit of the owner, or by mortgage of the ship under the Merchant Shipping Acts. The only case which is still of practical interest is that of a bond by the master of a foreign ship in a Scottish port.*

To be valid a loan on bond of bottomry by a master must (1) *have been preceded by communication with the owners if in any way practicable;* (2) *be necessary for prosecution of the voyage; and* (3) *not obtainable in any less burdensome way. It must be in writing, state the sum advanced and the premium or interest payable thereon, describe the subjects hypothecated, and specify the term after the arrival of the vessel when the sum becomes due. The master's authority to grant the bond is ruled by the law of the ship's flag* (*Lloyd, L. R.* 1 *Q. B.* 115).

The bond usually covers both the ship and the freight. Where it is necessary to include the cargo in the security, that is done either by a separate bond of respondentia or by a combined bond of bottomry and respondentia.

As the law of some countries, e.g. *Russia, makes certain special formalities essential to validity, enquiry should, where possible, be made at the consul of the country to which the vessel belongs.*

There is no stamp duty on bonds of bottomry (*Willis,* 7 *C. B. N. S.* 340).

Payment of the contents of a bottomry bond is usually enforced by an action of declarator of lien and for sale of the hypothecated ship. After the sale advertisement for claims is usually ordered, and the action becomes practically a multiplepoinding.

Where, owing to the bond not binding the owners personally, arrestment in the ordinary way cannot be used, the Court of Session may grant a special authority (*Lucovich*, 12 *R.* 1090).

Sheriffdom of at .

A. & Co., merchants in , indorsees [*or* assignees] of the bond of bottomry after mentioned, *Pursuers*,

against

D. B. & W. B., shipowners in , owners of the ship *X.* of , presently lying in the harbour of [*if owners abroad and names unknown, the instance will be against* R. M., master of the ship *X.* of Y., and as such representing the owner or owners thereof], *Defenders*.

The demand of the pursuers is—

For warrant to sell the said ship for payment of the sums due under a bond of bottomry granted by the master of said ship in pursuers' favour on 19 .

Therefore the pursuers crave the Court—

To find and declare that the sum of £ sterling, with the sum of £ of bottomry premium and the interest of the said two sums from [*date when bond became payable*] till payment, are true and lawful bottomry debts affecting the said ship *X.* of , and her tackle, apparel, and furniture, and that the pursuers have a real lien or burden upon the said ship and her foresaids for the said sums of money and interest thereof, preferably to all others: To grant warrant to sell the said ship and her foresaids by public roup after due advertisement; and to appoint the proceeds of sale, under deduction of the expenses of process and sale, harbour dues, and other expenses incurred or to be incurred in the safe-keeping of the said ship from the time the said bond became payable, to be paid to the pursuers to be applied towards payment of the aforesaid sums of money and interest due under said bond.

CONDESCENDENCE.

1. *Narrate circumstances in which bond was granted, e.g.* In 19 the said ship *X.* of stranded near T. and sustained damage.

After being floated off she was towed into T., where she received extensive repairs. To meet the cost of the said repairs, the maintenance of himself and the crew, and the claim for salvage, R. M., the master [*or* the defender], who had advised the defenders [*or* his owners] of the sums required to meet said expenses, but without obtaining from them the necessary remittances, borrowed from B. M. of T. the sum of £ on bottomry bond over the said ship.

2. By the said bond, dated 19 , the said R. M., as master foresaid and as such representing the defenders [*or* the owners of said ship] [*narrate terms of bond and indorsation to pursuers*].

3. The said ship thereafter sailed from T., and upon 19 arrived at Leith, where she is now lying. In terms of the said bond the sums due thereunder, principal and premium, became due on 19 , being days thereafter. The pursuers have applied to the defenders for payment of the sums due under the said bond, but they refuse or delay to make payment thereof, and the present action has therefore been rendered necessary.

PLEA IN LAW.

The said bond of bottomry being due and unpaid, the pursuers are entitled to decree of declarator and payment, and warrant to sell as craved.

19. Set and Sale of Ship.

NOTE.—*Actions of set and sale, being maritime causes, are competent in the Sheriff Court, irrespective of the value of the subject in dispute. Where the value is under £50, the jurisdiction of the Sheriff Court is privative.*

Where there has been mismanagement or unreasonable disagreement as to the management by the other proprietors, it may be convenient to insert conclusions for damages for the loss thereby occasioned to the pursuer. Such a conclusion and relative condescendence and plea in law are inserted within square brackets in the following form:—

Sheriffdom of at .

A. B. [*designation*], registered owner of shares of the ship of , *Pursuer*,

against

C. D. and E. F. [*designations*], registered owners of and shares in said ship, respectively, *Defenders*.

The demand of the pursuer is—

For set and sale of said ship, pursuer and defenders having differed

as to the management thereof, and being unable to agree as to the purchase of their respective shares [and for payment by the defenders jointly and severally to the pursuer of £ as loss arising to the pursuer from disagreement as to the management of said vessel, due to defenders' fault].

Therefore the pursuer craves the Court—

To find and declare that, as the pursuer is willing to sell his shares of the said ship to the defenders for £ , the defenders ought to accept thereof, and in the event of their declaring their acceptance thereof, to grant a decree against the defenders jointly and severally for payment to the pursuer of the said sum against the delivery of a bill of sale of the pursuer's shares of the said ship, duly executed by him in their favour; or otherwise, in the event of the defenders declining to accept thereof, to decern and ordain the defenders to sell, set, and give over to the pursuer their respective shares of the said ship or vessel, her boats, furniture, apparelling, and appurtenances whatsoever, at the prices following, *videlicet*, the said C. D. at the price of £ for the shares belonging to him, and the said E. F. at the price of £ for the shares belonging to him, upon payment to them respectively of the said sums, and to execute and deliver to the pursuer bills of sale of their said respective shares of the said ship or vessel on payment by the pursuer of the said sums; or otherwise, in the event of the defenders being unwilling either to buy or to sell, to grant warrant to , or to such other person as the Court shall think proper, to sell the said ship or vessel, with her boats, furniture, apparelling, and appurtenances whatsoever, in such manner, under such conditions, and after such intimation or advertisement as the Court shall direct: To ordain him to consign the free proceeds of the sale remaining, after deduction of the expenses of the sale, with the Clerk of Court; and thereafter to authorise the said free proceeds to be divided among the parties according to their respective rights and interests in the said ship or vessel: [And in any event, to grant a decree against the defenders ordaining them jointly and severally to pay to the pursuer £ [*the amount of loss to pursuer arising from disagreement as to management of vessel due to fault of defenders*], with interest from the date of citation until payment]; and to find the defenders liable in expenses.

CONDESCENDENCE.

1. The pursuer is owner of shares of the ship or vessel of , registered at the port of . The defender C. D. is owner of shares, and the defender E. F. of shares of the said ship or vessel, conform to certified copy of the register of the said ship or vessel herewith produced.

2. The said vessel was purchased by the pursuer and the defenders on . Since the date of the said purchase the pursuer and the defenders have continued in society as joint owners of the said vessel; but for some time past they and he have entirely differed in opinion as to the way and manner in which the said vessel should be employed. As the pursuer found it not only disagreeable but also injurious to continue longer in society with the defenders in said ownership, he caused intimation to be made to each of the defenders that he was desirous that the said society should cease and determine, and for this purpose he offered to them to buy their shares for the sum of £ per share, or else to sell his shares to them for the sum of £ per share, or, failing the defenders choosing to accept either of these alternatives, the pursuer proposed that the vessel should be publicly sold, and the free proceeds, after deduction of all expenses and payment of any debts due in respect of said vessel, divided between the owners according to their respective rights and interests. The defenders refuse or delay to agree to any of these proposals, and the present action has accordingly been rendered necessary.

[3. The disagreement between the owners of the vessel referred to is entirely due to the fault of the defenders and to the wrongous opinions as to her management held and insisted on by them. In consequence thereof, the vessel has been laid up in port since , and thus the pursuer has been deprived of the share of profits which she would have earned had she been employed in trading. The amount of loss so sustained amounts at least to the sum of £ sterling.]

PLEAS IN LAW.

1. The pursuer and defenders being the owners of the said vessel, and being unable to agree in regard to the management thereof, and the pursuer having offered either to sell his shares of the said vessel to the defenders at a specified price or to buy their shares at the same rate, and the defenders having refused or failed to accept his offer, the pursuer is entitled to have decree of sale, as also decree relative to the disposal of the price as craved.

[2. The pursuer having suffered loss to the amount of £ sterling through the fault of the defenders in regard to the management of the said vessel, he is entitled to decree for that sum as craved.]

20. For Warrant to Discharge and Store Cargo subject to Lien for Freight.

Sheriffdom of at .

A. B., shipowner, , managing owner of the s.s. *X.* of Y., presently lying in the harbour of , *Pursuer*,

against

C. D. [*designation*], *Defender.*

The demand of the pursuer is—

For warrant to unload and discharge into the store at the cargo of teak timber and planks remaining on board said vessel, there to remain subject to the pursuer's lien for the freight and charges thereof, payable in terms of the bills of lading therefor, as the same shall be ascertained on the discharge of said cargo, but under deduction of £ received on account, to the same effect as if the said portion of the cargo had remained on board said vessel, defender having refused to take delivery thereof and to pay the said freight and charges.

Therefore the pursuer craves the Court—

To grant warrant to unload and discharge said portion of cargo into the said store, or such store as the Court may appoint, there to remain subject to pursuer's said lien for the said freight as the same shall be ascertained, but under deduction of the said sum of £ received to account, and reserving to pursuer, on the discharge of said vessel being completed, his right to sue for the sale of such portion of the said cargo discharged under said warrant as may be required to pay the balance of said freight, costs, and charges incurred in carrying said warrant into effect, including the measuring of said timber and planks; and to find the defender liable in expenses in the event of his offering opposition hereto.

CONDESCENDENCE.

1. By charter-party entered into in England between the pursuer and G. H. [*designation*], dated 19 , it was, *inter alia*, agreed that the said ship should sail and proceed to for orders to load at or in the , and there load from the freighters a full and complete cargo of teak timber and planks,

which the said merchants bound themselves to send alongside the vessel at their risk and expense; and the vessel being so loaded should forthwith proceed to or at the option of the master, for orders to discharge at , or a port in the United Kingdom, and deliver the same on being paid freight at the rate of four pounds twelve shillings and sixpence, or, if ordered direct to , four pounds ten shillings sterling per load of fifty cubic feet; and it was by said charter-party further agreed that the said freight was to be paid, on unloading and right delivery of the cargo, by one-third in cash and the remainder by approved bills on London at four months' date from final delivery, or cash, less discount at the rate of 5 per cent. per annum, at merchant's option, or in cash at the current rate of exchange if ordered to discharge at a port on the Continent between Havre and Hamburg.

2. It was further agreed by said charter-party that the charterer was to have the option of employing the ship abroad, on giving due notice of his intention to do so, for a period not exceeding months nor less than months at per month per register ton, all port charges, labour, &c., beyond the services of the crew to be paid by the charterer, and ultimately the ship was to return to Europe and so complete the charter-party, as the said charter-party, a copy of which is produced, more fully bears.

3. On the vessel's arrival at in the , she was ordered by the charterer's agent to proceed to , where, after some days' detention, the said charterer exercised the foresaid option of employing the ship abroad, and she was so employed by him for months, during which she made a voyage on the charterer's account from to and back.

4. On the expiry of the said period, the vessel being then at , ready to load her homeward cargo, as neither G. H. nor I. J., his authorised agent there, could furnish a cargo, it was, by agreement dated 19 , written on the back of said charter-party, mutually agreed between K. L., the master of said ship, and the said I. J., as the agent for the said G. H., that the said ship should, with all convenient reasonable despatch, proceed to , to be loaded there with timber, &c., in accordance with the said charter-party, in consideration of his receiving an addition of shillings per load to the freight stipulated in said charter-party on the cargo loaded at , payable on delivery of the cargo as specified in said charter-party, and the said I. J. thereby further agreed to ship in said vessel at , for Europe, fifty tons of cutch at a freight of four pounds sterling per ton of twenty hundredweights, payable on

delivery. Thirty-one working laying days to be allowed for loading in , to count from the time of the captain going ashore and giving notice that he was ready to load there, as the said agreement, a copy of which is herewith produced, in itself more fully bears.

5. The vessel accordingly proceeded to , where there were shipped on board of her by M. N. [*designation*] in all six hundred and three squares of teak timber, and two hundred and twenty teak planks, which were to be delivered at the port of discharge, for which the master was to receive orders at or , whither the said vessel was to sail from unto order or to assigns, he or they paying freight for the said goods on right delivery at the rate of five pounds seven shillings and sixpence per ton of fifty cubic feet to the United Kingdom, or to the Continent at ten pounds per cent. additional freight as per charter-party, with primage and average accustomed, conform to bills of lading, dated 19 , granted by the said master, his copy of which is herewith produced.

6. Having been so loaded, the said vessel sailed from , and having arrived at she there received orders to proceed to as her port of discharge, and having accordingly sailed for , she arrived there upon 19 , and now lies in the harbour of .

7. After the arrival of the vessel as aforesaid, the bills of lading for the said cargo of teak timber, or at least one of the said bills of lading, duly indorsed, was presented to the master by the defender, and he has paid to the pursuer the sum of £ to account of the freight of the said cargo mentioned in said bills of lading. Thereupon the discharge of said cargo was proceeded with, and about one-third has been delivered to the said defender.

8. The defender has since informed the pursuer that the said G. H. has intimated or caused to be intimated to him that he is not to pay to the pursuer the balance of the freight of the said cargo, and that he, the defender, will decline to pay the same.

9. A much larger sum is due to the pursuer for the freight payable under the charter-party than the balance of freight payable under the said bills of lading.

10. The pursuer is not bound to deliver up possession of the remainder of the said cargo till the balance of the said freight has been paid to him in terms of said bills of lading, and the defender has agreed to the pursuer having the remainder of the cargo on board of said vessel delivered into the hands and custody of a wood-measurer in , to be held by him subject to the pursuer's lien for the remainder of the said freight payable under said bills of lading.

PLEA IN LAW.

The pursuer not having been paid the freight due under the charter-party, he has a preferable right to the freight payable under the bills of lading, and is entitled to secure such preferable right by having the cargo landed and stored subject to his lien over the same for the freight.

21. For Stoppage of Goods in Transitu.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D., master, and as such representing the owners of the s.s. *X.* of Y., presently lying in the harbour of , and E. F., merchant, Street, , *Defenders.*

The demand of the pursuer is—

For redelivery to the pursuer of 500 bags of sugar, marked "C. A.," presently on board said steamer, sold by pursuer, and shipped on 19 at for delivery to the defender E. F. at , at the price of £ , said price being unpaid, and the defender E. F. having become insolvent.

Therefore the pursuer craves the Court—

To interdict the defender C. D. from delivering to the defender E. F. or to any person other than the pursuer the said 500 bags of sugar, and to grant interim interdict: To ordain the defender C. D. to restore and deliver back to pursuer said 500 bags of sugar; and to find the defenders or any other person offering opposition hereto liable in expenses.

CONDESCENDENCE.

1. On 19 the pursuer sold to the defender E. F. 500 bags of sugar at the price of £ per cwt.

2. In implement of said sale, and in terms of instructions received by the pursuer from the said E. F., the pursuer, on or about 19 , shipped on board of the said screw steamer or vessel *X.*, while at , the said 500 bags of sugar, marked "C. A.," for delivery to the said E. F. at , where the said steamer, with the said goods, arrived on 19 . The said goods are still on board of the said steamer, and in the custody of the said C. D., and are still *in transitu.*

3. The price of the said 500 bags is £ , conform to invoice, dated 19 , which specifies the weight of the said goods herewith produced.

4. Since the said goods were shipped on board of the said screw steamer or vessel *X.*, the said E. F. has become insolvent, and he has not paid any part of the price of said goods. It is therefore necessary for the protection of the pursuer that delivery of the said goods should be stopped, and possession thereof regained by them.

PLEA IN LAW.

The defender E. F. having become insolvent without paying the price of said goods, and said goods being still *in transitu*, the pursuer is entitled to decree as craved.

22. By Charterer against Shipmaster for Delivery of Bills of Lading.

Sheriffdom of at .

A. B., merchant, Street, , charterer of the s.s. *X.* of Y., presently lying in the harbour of , *Pursuer*,

against

C. D., master, and as such representing the owners of said ship, against whom jurisdiction has been founded by arrestment of said ship at pursuer's instance, *jurisdictionis fundandæ causa*, *Defender*.

The demand of the pursuer is—

For a decree ordaining defender to deliver to pursuer bills of lading signed by the defender for 400 tons of iron, valued at £ , shipped by pursuer on board said vessel as a cargo from to , conform to charter-party entered into between pursuer and defender on 19 , and for payment by the defender to the pursuer of £ as loss and damage which pursuer will sustain in the event of the defender not making such delivery.

Therefore the pursuer craves the Court—

To ordain the defender, within such time as the Court may appoint, to sign bills of lading for 400 tons of iron as tendered by the pursuer; failing his doing so, to ordain the defender to re-deliver to pursuer said 400 tons of iron; failing defender's doing either, to grant warrant to officers of Court, with such assistance as they may require, to pass on board said vessel,

to unload and discharge the said 400 tons of iron, and to deliver same to the pursuer, and in that event to grant a decree against the defender for payment to the pursuer of (1) the costs incurred in the unloading and discharging said cargo as the same may be ascertained in this process, and (2) £ in name of damages; and to find the defender in any event liable for the expenses of this process. [And to grant warrant, &c.]

CONDESCENDENCE.

1. Upon 19 the defender, as master of said vessel, entered, at , into a charter-party with the pursuer for the conveyance in his said vessel of a cargo of iron from to , freight for the same to be paid at the rate of per ton, conform to the said charter-party, which is herewith produced and referred to.

2. The pursuer intended to sell the said iron as per the bills of lading for the same, and for this purpose he arranged with the defender that the iron, before being taken delivery of by him or put on board of his said vessel, should be weighed alongside in presence of the mate or other person intrusted by the defender to see the iron weighed.

3. Accordingly all the iron sent by the pursuer alongside of the said vessel for shipment in her was weighed by a skilled weigher, in presence of the mate of the said vessel, who granted receipts for the aggregate weight of each day's shipments. These receipts are herewith produced, and show that the total quantity received by the defender, or the mate on his behalf, was 400 tons.

4. Upon the shipment of the cargo being completed, the pursuer tendered to the defender bills of lading, in due and customary form, for the said 400 tons of iron, which is of the value of £ , and required him to sign and deliver the same to the pursuer; but the defender refused to do so unless the pursuer would allow him to qualify the bills of lading by adding the words, "weight unknown."

5. The pursuer declined to accept the bills of lading with such a qualification, and intimated to the defender that unless he signed the bills of lading without such qualification, he must redeliver the iron to him, in order that he might ship it in another vessel; but the defender refuses to do so, and threatens to proceed on his said voyage with the said iron on board of his said vessel, and without delivering to the pursuer bills of lading as required by him, and as he is bound to do.

6. The pursuer has suffered, and will suffer, loss and damages to the extent of at least £ , in consequence of the defender's said failure to sign and deliver to the pursuer proper bills of lading in due and customary form for the said 400 tons of iron, and of its therefore becoming necessary that the said iron should be discharged from the defender's vessel and reshipped in another.

PLEAS IN LAW.

1. The iron shipped by the pursuer on board of the defender's vessel having been weighed over to him immediately before shipment, and the weight having thus been clearly ascertained, the pursuer was entitled to have bills of lading delivered to him for such weight as tendered by pursuer without qualification.

2. The defender having refused to deliver said bills of lading, the pursuer is entitled to obtain redelivery of his goods.

3. Failing delivery of his goods as craved, pursuer is entitled to obtain warrant for their discharge as craved.

4. Failing delivery by defender of said bills of lading, or alternatively, of said cargo, pursuer is entitled to compensation for the loss and damage to be sustained by pursuer in consequence of defender's said failure, which is moderately estimated at £ .

23. Salvage.

FOR PAYMENT OF SALVAGE.

(*See sec.* 547 *of Merchant Shipping Act*, 1894.)

Sheriffdom of at .

A. B., C. D., &c. [*designations*], *Pursuers*,

against

The L. M. Company, Ltd., Street, *Defenders.*

The demand of the pursuers is—

For determination, in terms of sec. 547 of the Merchant Shipping Act, 1894, of the amount of salvage to be paid to the pursuers for the salvage services rendered to the defenders' steamship , in Y. Bay, on 19 .

Therefore the pursuers crave the Court—

To determine the amount to be paid to the pursuers for the said salvage services, and to grant a decree against the defenders for payment thereof to the pursuers; and to find the defenders liable in expenses.

Condescendence.

1. The pursuers are fishermen residing at X., and the defenders are the owners of the steamer of Y.

2. On the evening of Friday, the day of , the said steamer, while on a voyage from Z. to Y., arrived in Y. Bay. The weather was then exceedingly unfavourable for navigation, the land and lights being obscured by a thick fog, while a heavy sea was running. Owing to the stormy sea and a strong tide, the was carried past the entrance to the port of Y., and drifted southwards towards the rocks at Y. Head, and her position became extremely dangerous. The coast at Y. Head is extremely rocky, and had the vessel struck she and her cargo would in all probability have been lost, and the lives of her crew placed in great danger.

3. On finding the vessel in such a position of danger, her captain fired guns of distress as a signal that she required immediate assistance. The pursuers at once manned a boat, at great personal risk to themselves and their boat, owing to the fog and heavy sea. When near the bar the tug *M.* of Y., which also had been attracted by the signal guns, took the pursuers' boat in tow, and the tug and boat thereafter proceeded together in search of the vessel in distress. After a search, in the course of which both tug and boat were several times in great danger, they came upon the , and her master requested the assistance of the pursuers and the tug. Owing to the position of the , the tug could not get alongside, and the pursuers had to pass a hawser from the to the tug. This the pursuers succeeded in doing at great risk to their lives and boat, and ultimately the tug got the in tow and carried her into Y. Harbour, the pursuers standing by in case further assistance should be required.

4. The said vessel is worth at least £ , and carried a cargo valued at £ . As narrated, the pursuers materially assisted in saving the said vessel and cargo, and they claim reasonable salvage therefor from the defenders. The defenders, however, refuse to make reasonable compensation to the pursuers, and the present action is necessary.

Plea in Law.

The pursuers and defenders being unable to agree as to the amount of salvage payable for the services libelled, they are entitled to have the same fixed by the Sheriff, in terms of sec. 547 of the Merchant Shipping Act, 1894.

Shop, for Implement of Lease of.—*See* IMPLEMENT, No. 4. *See also* DECLARATOR, No. 16.

Sist.—*See* BANKRUPTCY, No. 18; MOTION.

Slander.

NOTE.—*It may be oral or written, and (differing therein from the rule in England) is actionable although heard or read only by the person slandered. It must be false and defamatory.*

FALSEHOOD.—*The statement must be untrue, but if defamatory is presumed false till proved true. The persistent and malicious publication of a statement holding a person up to public ridicule and contempt may give rise to action, and in this case* veritas *may be no defence.*

DEFAMATION.—*The statement must be defamatory. Words used* in rixâ *are not, as a rule, actionable. Depreciating business or credit is defamatory, and slander of title grounds action. Where the words used are not in themselves defamatory they must be shown to be so by innuendo, in which case the facts and circumstances founded on to explain the meaning put on the words must be averred, and the words themselves must fairly bear the construction put on them. Defamation may be by acts as well as words or by reference,* i.e. *adopting the slander of another.*

VERBAL INJURY.—*A statement, though not defamatory, will be actionable if the person affected proves it to be* (1) *false,* (2) *uttered maliciously, and* (3) *the cause of actual injury to him.*

PRIVILEGE.—*Where the defender was exercising a right or discharging a duty in making the statement, the fact that it is defamatory is not sufficient: it must be averred that it was made maliciously and sometimes without probable cause. Where, therefore, privilege is disclosed on record, it must be countered by such averments as put the statement beyond the protection of the degree of privilege pleaded. Privilege varies from absolute protection,* e.g., *in case of judges, counsel, and witnesses (unless in the latter case the person is examined on his own behalf) to such circumstances as make a bare averment, and legal proof of it, sufficient to evade the plea. It is the occasion only, and never the person that is privileged.*

Criticism of published works, public performances, or public acts are not actionable, provided they be fair, and that in case of public men it is confined to their public acts.

Publishers are responsible for anonymous publications if libellous.

APOLOGY FOR SLANDER *must contain retractation as well as an expression of regret. The falseness of the statement must be admitted, but the*

defender need not admit that he made it. The apology may be framed hypothetically. "If the statement was made," &c. *See* TENDER, infra.

SLANDER OF PROPERTY OR TITLE.—*These actions, although well known in English law, have never been looked on with favour in Scots practice. They are, however, quite competent* (*Bruce*, 1 *F.* 327; *Harpers Ltd.*, 4 *S. L. T.* 116). *Special damage must, however, in both cases be averred and proved.*

1. Verbal Slander.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as damages for slander as condescended on.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation and expenses.

[And to grant warrant, &c.]

CONDESCENDENCE.

1. The pursuer is a dealer in horses, and carries on an extensive business in importing, purchasing, and selling horses. He is thus well known to a very large number of people in connection with horse-dealing transactions, and many of those who employ or deal with the pursuer rely on his experience and knowledge and good faith in purchasing or selling horses for them.

2. On 19 , in or near the pursuer's auction market in Street, , during the progress of a sale of horses belonging to the pursuer, the defender approached close to the pursuer while the latter was surrounded by a large number of persons attending the sale, and pointing to the pursuer, and addressing those in his immediate vicinity, said [*quote the slander*]. The pursuer thereupon asked defender what he meant by making such a statement as that, and the defender replied [*quote*]. The said statements were made in the presence and hearing of a large number of the people in the said auction market at the time, and in particular of E. F. [*designation*], G. H. [*designation*], and L. M. [*designation*].

3. The meaning conveyed and which was intended and calculated to be conveyed by the said statements was that the pursuer had acted

dishonestly towards the defender; that he had defrauded the defender, and was a person in the habit of cheating and swindling, and had been guilty of such dishonest conduct as to render himself liable to prosecution therefor.

4. The said statements made by the defender of and concerning the pursuer are false and calumnious, and were intended to injure and have seriously injured the pursuer in his feelings, reputation, and business credit. The said statements were made publicly before a large number of persons in the habit of dealing with the pursuer, and the fact of said accusations having been so made has been widely spread amongst people in the trade and amongst pursuer's customers and employers. The injury sustained by the pursuer is moderately stated at the sum of £ , being the sum sued for.

5. The defender has been asked to retract and apologise for said false and slanderous statements, but declines to do so, and the present action has thus been rendered necessary.

PLEAS IN LAW.

1. The defender having slandered the pursuer as condescended on, is liable in reparation to the pursuer therefor.

2. The pursuer having sustained injury to his feelings, reputation, and business credit by the said false and calumnious statements of the defender, is entitled to solatium therefor.

2. For Slander by Newspaper.

NOTE.—*This form may easily be adapted to meet the case of a slanderous advertisement.*

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The claim of the pursuer is—

For payment by the defender to the pursuer of £ as damages for slander contained in the *X. Advertiser*, of which defender is the publisher, in the issue of 19 , as condescended on.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and expenses. [And to grant warrant, &c.]

CONDESCENDENCE.

1. The pursuer is [*designation*]. The defender is the publisher of the *X. Advertiser*, a weekly newspaper which is published at X., and has a large circulation in the town of X. and throughout the surrounding district.

2. In the issue of his said paper dated 19 , the defender printed and published the following statement in the form of a letter to the editor from an anonymous correspondent [*quote letter*].

3. The said letter and statements therein contained are in part of and concerning the pursuer, and falsely, calumniously, and maliciously, and without probable cause, represent that the pursuer, while occupying a position of trust, had abused the office entrusted to him, and had in his said office acted corruptly for his own personal benefit [*or otherwise according to the innuendo put upon the letter by the pursuer*].

4. The said false and slanderous statements made and published by the defender of and concerning the pursuer have attracted much attention in X. and the neighbourhood, and have formed the subject of public talk and comment, to the pursuer's prejudice. In consequence of said statements, the pursuer has suffered in his feelings and reputation, and he has sustained, and will sustain, loss, injury and damage in his feelings and character.

5. The pursuer has called upon the defender to disclose the name and address of the alleged writer of the letter above quoted, but he declines to do so. He also declines to retract or apologise or to make reparation to the pursuer, and in these circumstances the present action has been rendered necessary. The compensation due to the pursuer for the loss, injury and damage sustained by him are moderately estimated at the sum sued for.

PLEA IN LAW.

The defender having slandered the pursuer as condescended on, the pursuer is entitled to damages as concluded for, with expenses.

3. Slander of Property.

Sheriffdom of at .

A. B. [*designation*], proprietor of the piece of ground in X. Street, Y., *Pursuer*,

against

C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For payment by the defender to the pursuer of £ as damages for the slander by the defender of pursuer's said property as condescended on.

Therefore the pursuer craves the Court—

To grant a decree against the defender for payment to the pursuer of £ , with interest from the date of citation, and expenses. [And to grant warrant, &c.].

CONDESCENDENCE.

1. The pursuer is [*designation*]. The defender is [*designation*].

2. The pursuer some time ago purchased a piece of ground in X. Street, Y., for the purpose of erecting a tenement of houses and shops thereon. He proceeded with the erection, but after some time a portion of the building collapsed, owing to defective foundations. Subsequently new foundations were put in, and the portion that had collapsed was rebuilt. Various precautions were also taken as regarded the rest of the building, and the whole work was executed subject to the supervision of an experienced architect.

3. On or about 19 the defender published a paragraph in the newspaper in the following terms [*quote paragraph complained of*].

4. The said paragraph referred to the pursuer's said buildings, and was false, calumnious, and malicious. It was intended to represent, and did falsely, calumniously, and maliciously represent, that the buildings had been hastily and insecurely erected, and that there was reason to apprehend a second collapse. The said statements were entirely false and unfounded, and were extremely injurious to the reputation of the pursuer's property, and were calculated to produce, and did produce, serious injury and damage to the pursuer.

5. In consequence of the said statements the reputation of pursuer's property has suffered greatly, and the pursuer has thus been a heavy loser. At the time of publication of the said paragraph the pursuer was negotiating with several persons for the sale thereof, but, as the pursuer believes and avers, in consequence of the statements in the said paragraph, the said negotiations fell through. The letting of the said property has also been prevented, and the pursuer, in endeavouring to obtain tenants for portions of the said building, has been frequently met with the allegation that the building has been reported by the defender's newspaper to be insecure and unsafe. The value of the said property in the selling market has also been greatly affected, and were the said pro-

perty exposed for sale it would only find a purchaser at a greatly depreciated price. The defender's newspaper has a wide circulation in X., and the said statements have thus obtained a very extensive publicity.

6. The pursuer has called upon the defender to make reparation for the injury done to him by the publication of the said statements, but he refuses or delays to do so, and the present action has thus been rendered necessary. The pursuer moderately estimates the damage sustained through the defender's actings at the sum sued for.

PLEA IN LAW.

The defender having injured the pursuer as condescended on, the pursuer is entitled to damages as concluded for, with expenses.

Society, against Misapplication of Funds of.—*See* INTERDICT, No. 18.

Stated Case.—*See* AGRICULTURAL HOLDINGS ACT; WORKMEN'S COMPENSATION ACT.

Stock.—*See* PLENISH.

Stockbroker, for Payment of Account to, and Delivery of Scrip.—*See* ACCOUNT, No. 8.

Stoppage in transitu.—*See* SHIPPING, No. 21.

Store.—*See* SHIPPING.

Stray Cattle, for Warrant to Sell.—*See* WARRANT.

Street.—*See* DECLARATOR; INTERDICT; REPARATION.

Submission.—*See* ARBITRATION.

Succession.—*See* DECLARATOR; MULTIPLEPOINDING; PAYMENT.

Surface, &c.—*See* DECLARATOR; INTERDICT.

Suspension.

1. Suspension of Charge on Bill.

Sheriffdom of at

A. B. [*designation*], *Pursuer*,
against
C. D. & Co. [*designation*], *Defenders.*

The demand of the pursuer is—

For suspension of a charge executed against pursuer at the instance of the defenders on 19 , upon an extract registered protest and warrant thereon dated 19 , purporting to proceed upon a bill dated 19 , drawn by the defenders upon and accepted by the pursuer, payable three months after date, pursuer having received no value therefor, and it having been granted for the accommodation of defenders.

Therefore the pursuer craves the Court—

To suspend the said charge, decree, and warrants thereof; and to find defenders liable in expenses.

CONDESCENDENCE.

1. On 19 the pursuer was charged at the instance of the defenders, by virtue of an extract registered protest from the books of Court and warrant therein contained, dated 19 , to pay to the defenders the sum of £ alleged to be contained in a bill, dated 19 , drawn by the defenders upon and accepted by the pursuer, and payable three months after date, with interest thereon at 5 per cent. per annum till paid, most wrongously and unjustly.

2. The pursuer received no value for the said bill, which was granted for the accommodation of the defenders.

3. The pursuer is not resting-owing to the defenders the sum in the said bill, or any sum whatever.

4. The pursuer has found sufficient caution in the hands of the Clerk of Court for the sum charged for, with interest and expenses to be incurred.

PLEA IN LAW.

The said bill having been granted for the defenders' accommodation, the pursuer is entitled to suspension of the charge and diligence thereon as craved.

2. Suspension of an Alimentary Decree.

(*See also* ALIMENT, No. 7.)

Sheriffdom of at .

A. B. [*designation*], defender's father, *Pursuer*,
against
C. D. [*designation*], his son, *Defender*.

The demand of the pursuer is—

For suspension of a decree of aliment obtained in this Court on 19 by defender against pursuer, in virtue of which pursuer has been charged [*or* is threatened to be charged] for payment to defender of aliment at the rate of , the circumstances of defender having materially altered since said date.

Therefore the pursuer craves the Court—

To suspend the said decree, charge, and warrants thereof, and to find the defender liable in expenses.

CONDESCENDENCE.

(*Take in that given in* ALIMENT, No. 7.)

PLEA IN LAW.

The circumstances of the pursuer having materially altered, and the defender not being now entitled to aliment, suspension of the said decree, charge, and warrants thereof should be granted as craved.

3. Restriction of Alimentary Decree and Suspension.

(*See* ALIMENT, No. 8, *adding to the crave a prayer for suspension as in the previous form, and the appropriate plea in law.*)

4. Suspension and Liberation.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For suspension of a pretended decree of this Court, obtained against the pursuer at the instance of defender, dated 19 , finding that pursuer was the father of defender's illegitimate

male child, and decerning against him for payment of aliment therefor, and of the warrant, proceeding upon a minute for imprisonment, following upon said decree; and for liberation of the pursuer from the prison of , where he has been imprisoned by virtue of said warrant since .

Therefore the pursuer craves the Court—

To suspend the said pretended decree, whole grounds and warrants thereof, and the diligence following thereupon: To grant warrant to the Governor of the prison of to liberate the pursuer; and to find the defender liable in expenses.

Condescendence.

1. The defender, on 19 , raised an action in this Court of affiliation and aliment against the pursuer in respect of her illegitimate male child, born on , of which she alleged that pursuer was the father. On 19 defender obtained decree in pursuer's absence, in terms of which pursuer was decerned against to pay defender aliment at the rate of for said child.

2. Following upon said decree in absence, defender by minute craved warrant for the imprisonment of the pursuer, which in pursuer's absence she succeeded in obtaining.

3. Pursuer was arrested on 19 and lodged in the prison of .

4. The initial writ in said action was not served upon pursuer, and he had no knowledge of any legal proceedings having been instituted against him in respect of defender's said child, of which he is not the father. Had pursuer had any notice of said action he would at once have instructed his defence, and he would have experienced no difficulty in proving that he is not the father of said child.

5. Pursuer received no charge of any kind following upon said decree, and he was totally unaware that any warrant of imprisonment had been granted against him till he was arrested on and lodged in the prison of .

6. In these circumstances pursuer craves that the said decree may be suspended *impliciter*, and that warrant for his liberation from said prison may be granted.

Plea in Law.

The said decree having been wrongfully and illegally obtained, and the charge and warrant thereon being inept, decree of suspension and liberation should be granted as craved.

5. Suspension of Charge on Decree of Court.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For suspension of a charge, at the instance of defender, for payment of £ under a decree of this Court dated 19 .

Therefore the pursuer craves the Court—

To suspend the said charge and whole grounds and warrants thereof; and to find the defender liable in expenses in the event of his offering opposition hereto.

CONDESCENDENCE.

1. On 19 the defender raised an action of against the pursuer, concluding for payment of £ . The pursuer duly lodged appearance in said action on .

2. On , the day before defences were due, the pursuer met defender's agent in the street, and in the course of conversation the pursuer explained the circumstances which led to the claim being made against him by the defender, and the nature of his proposed defence. Defender's agent professed to be quite satisfied with pursuer's explanations, and informed pursuer that he would undertake to see defender and advise him to drop the action. Pursuer accordingly called on his agent and informed him of the conversation which had taken place.

3. In reliance of the undertaking given by defender's agent, the pursuer's agent did not lodge pursuer's defences to said action, nor did he attend the Court on the day when defences were due.

4. The defender's agent, notwithstanding his undertaking, and without further notice to the pursuer or his agent, attended Court on the day when said defences were due, and, in respect of pursuer's default in not lodging defences, obtained decree in the action by default.

5. The pursuer has been charged under said decree to pay defender the sum of £ . The pursuer is not due the defender said sum, as he could have shown had his defences been lodged; he therefore craves suspension of the said charge, and is willing to find caution to the satisfaction of the Court for the amount of said decree.

PLEA IN LAW.

The pursuer not being indebted to the defender in the said sums, and having been, in breach of defender's undertaking, wrongfully charged for payment thereof, is entitled to obtain suspension of the charge and diligence.

Taxation.—*See* ACCOUNT, No. 5.

Tenant.—*See* DECLARATOR; IRRITANCY; LANDS CLAUSES ACTS; LEASE.

Tender, Minute of.

A tender is a judicial offer to settle an action. Its object is—(1) *to induce the pursuer to settle the action, or* (2), *if it is not accepted, to reduce the pursuer's claim for expenses and found a claim for expenses by the defender. The general effect of a tender on the expenses is as follows:—If the pursuer refuses the tender and ultimately gets no more or less than the sum tendered, he is not entitled to expenses subsequent to the date of the tender, while the defender is entitled to his expenses subsequent to that date. A tender may be made before the litigation is commenced, in which case it should be repeated in the defences, or it may be made in the defences, or—the most usual case—by a separate minute lodged in process at any time prior to judgment in the cause. A tender is usually of a sum of money, but where the conclusions are not pecuniary it may be of implement of any part of the conclusions of the action.*

A tender must—(1) *be unconditional;* (2) *contain, even if extra-judicial* (*Wick*, 1 *F.* 199), *an offer of taxed expenses to its date; and* (3), *in defamation cases, include an apology and retractation. A tender may be made under reservation of the defender's rights and pleas, but this is not necessary. In defamation cases, if the defender admits having used the words complained of but denies the innuendo, it is not sufficient in the tender to say that he did not intend the meaning put on the words; there must be withdrawal, an admission that there was no ground for the calumny* (*Malcolm*, 4 *F.* 23), *and an apology. If the defender denies using the words complained of, he may put into the tender that he is not conscious of having used them, but must add that if he did there was no justification, and must express regret.*

A tender ought always to bear the date of lodging.

The offer of expenses includes the expense of taking advice and consulting whether the tender should be accepted.

1. Simple Tender.

A. for the defender [*or simply* The defender] hereby tenders to the pursuer the sum of £ , together with the taxed expenses of process to the date hereof, in full of all claims made in this action.

2. Tender of Part of Sum Sued for.

The defender admits liability for £ of the sum sued for, and hereby tenders the said sum of £ , together with the taxed expenses of process to the date hereof, in full of all claims made in this action.

3. Tender under Denial of Liability.

The defender, while denying liability [*or* without admitting liability] for the sum sued for, hereby tenders £ , together with the taxed expenses of process to the date hereof, in full of all claims made in this action.

4. Defamation Cases.

(*a*) Where Slander is Admitted.

The defender hereby unreservedly withdraws the words [*or* expressions] complained of by the pursuer in this action; admits that there was no justification therefor; apologises to the pursuer for having made use thereof; and hereby tenders to the pursuer the sum of £ , together with the taxed expenses of process to the date hereof, in full of all claims made in this action.

(*b*) Where Slander is not Admitted.

The defender, while denying all knowledge of having made the charge against the pursuer complained of in this action, admits that if the words complained of were made use of by the defender with reference to pursuer, they were unjustifiable, and he unreservedly withdraws them and apologises to the pursuer therefor, and he hereby tenders £ , together with the taxed expenses of process to the date hereof, in full of all claims made in this action.

Tenor of Deed.—*See* Declarator, No. 19.

Terce, Kenning to.—*See* Service, No. 15.

Town Councils Act, 1900.—*See* Elections.

Trade Mark and Trade Name.

1. For Interdict against Infringement of Trade Name.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For interdict against defender from trading under the firm or style of B. & D.

Therefore the pursuer craves the Court—

To interdict the defender from trading under the firm name or style of B. & D., or issuing notices or granting receipts or other documents bearing the name of B. & D., or purporting to be issued by B. & D.; and to grant interim interdict; and to find defender liable in expenses.

Condescendence.

1. The pursuer is a wine merchant, and carries on business at , under the name and firm of B. & D. The defender is also a wine merchant, and carries on business at , under the name of B. & D.

2. Previous to 19 the pursuer and the defender carried on business in partnership as wine merchants at , under the name and firm of B. & D.

3. On 19 , by agreement, dated 19 , the defender sold to the pursuer his whole right, title, and interest in the stock, plant, and goodwill of said firm of B. & D. By said agreement it was provided that the pursuer should acquire the sole right to the use of the said firm name of B. & D. Since said 19 the pursuer has accordingly carried on business as a wine merchant at , under the name and firm of B. & D.

4. The defender has commenced business at as a wine merchant under the name and firm of B. & D.

5. The assumption and use of said name by the defender is injurious to the pursuer's business, misleads the public, and causes confusion between the pursuer's and the defender's businesses. [*If any specific instances of deception are known, give them.*]

6. The pursuer has called upon the defender to desist from the use of said name, but he refuses to do so.

PLEA IN LAW.

The pursuer having acquired from the defender the right to the firm and name of B. & D., is entitled to interdict against the use of the said name by the defender, as craved.

2. For Interdict against Infringement of Registered Trade Mark, and for Damages.

Sheriffdom of at .

A. B. & Co. [*designation*], *Pursuers*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuers is—

For interdict against the defender from infringing the pursuers' trade mark of [*describe it*], and for payment by the defender to the pursuers of £ as damages for defender's infringement thereof.

To interdict the defender from infringing the pursuers' trade mark [*if registered, add*—Registered in the Register of Trade Marks, No. , dated and] consisting of the device of [*describe trade mark*], by making or selling or offering for sale, or using labels or invoices or other documents with the said trade mark thereon, or any colourable imitation thereof, in connection with the manufacture or sale of [*state goods for which the trade mark is used*], or upon or attached to any such goods or class of goods; and to grant interim interdict; and to grant a decree against the defender for payment to the pursuers of £ , with interest from the date of the decree to follow hereon until payment; and to find the defender liable in expenses.

CONDESCENDENCE.

1. The pursuers carry on business as manufacturers of *inter alia* [*goods for which trade mark is used*], at . The defender carries on a similar business at .

2. For many years the pursuers have used as their trade mark a device consisting of [*describe trade mark*], and the public and their customers have become accustomed to associate this device exclusively with the goods manufactured and sold by the pursuers. [*If the trade*

mark is registered, the averment may be—On 19 the pursuers applied for registration of their trade mark, consisting of the device of [*describe accurately the trade mark*], under and in terms of the Trade Marks Act, 1905, and on 19 the application was granted. Since said 19 the pursuers have been entered in the Register of Trade Marks as proprietors of said trade mark. Said trade mark is numbered No , and dated .]

3. The pursuers have ascertained that the defender is using, in connection with the manufacture and sale of [*goods*], a device consisting of [*describe defender's trade mark*]. In particular, the defender prints this device upon the labels attached to said [*goods*] and on the invoices used by him in his business. The said device used by the defender is a colourable imitation of the pursuers' trade mark, and is reasonably calculated to deceive the public and the pursuers' customers, and to mislead them into believing that the goods manufactured by the defender and bearing the said device of [*defender's trade mark*] are goods manufactured by the pursuers. [*Intention to deceive is not necessary* (*Bayer*, 25 *R. at p.* 1148), *nor is evidence of actual deception, though it is the best proof that the use complained of is calculated to deceive* (*Cowie*, 24 *R. at p.* 358). *But if instances of actual deception are to be proved, they should be averred* (cf. *Crawford's Trs.*, 23 *R. at pp.* 751 *and* 752).] The use of said device is an infringement of the pursuers' right, and injurious to the pursuers' trade. By said use and infringement the pursuers have suffered loss and damage, which is moderately estimated at the sum sued for [*on the measure of damages where fraud has been proved*, cf. *Thomson & Co.*, 24 *R.* 1173].

4. The pursuers have called upon the defender to desist from using the said device, but the defender refuses to do so.

PLEAS IN LAW.

1. The defender having infringed and still continuing to infringe the pursuers' trade mark as condescended on, the pursuers are entitled to interdict as craved.

2. The pursuers having suffered loss and damage to the amount concluded for through the wrongous and illegal acts of the defender, are entitled to the reparation craved.

3. Complaint for Contravention of the Merchandise Marks Act, 1887.

[*The authorities on the form of such complaint are collected and commented on in Brown's Summary Jurisdiction, pp.* 40 *to* 87.]

(*Under the Summary Jurisdiction (Scotland) Act*, 1909, *and the Criminal Procedure (Scotland) Act*, 1887.)

[*Insert date and place where complaint is signed by complainer.*]

Unto the Honourable His Majesty's Justices of the Peace for the County of [*or* the Sheriff of the County of , *or* the Magistrates of the Burgh of];

The complaint of A. B. [*designation*], aerated water manufacturer, with the consent and concurrence of C. D., Procurator-Fiscal of Court;

Humbly sheweth,—

That E. F. [*designation*] has been guilty of an offence within the meaning of the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), and particularly sec. 2, subsec. 2 thereof, in so far as he did on [*date*], within the shop occupied by G. H. [*address*], without the authority of the complainer, by the hand of his servant I. K., while acting in the ordinary course of business and within the scope of his employment under the respondent, and having the respondent's authority and instructions, sell and deliver to the said G. H. goods, namely, aerated waters contained in three bottles, to which goods false trade descriptions, namely, "E. F.'s Aerated Waters," were at the time of said sale applied, the said words being embossed on each of said bottles, and being a trade description indicating that the aerated waters were manufactured by the complainer, and the said trade description being false as regarded the said aerated waters to which it was applied at the time of the sale, in respect that it represented them to have been manufactured by the complainer, the truth being that they were not so manufactured: Whereby the said E. F. is liable under sec. 2, subsec. 3 (ii.), of the said Merchandise Marks Act, 1887, on summary conviction of said offence (this being his first offence), to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding twenty pounds; and also, under sec. 2, subsec. 3 (iii.), of the said Act, to forfeit to His Majesty every chattel, article, instrument, or thing by means of or in relation to which the said offence has been committed; and further, under sec. 14 of the said Act, to pay to the complainer the costs of this prosecution.

May it therefore please your Honours [*or* your Lordship] to grant warrant to cite the said E. F. to appear before you to answer to this complaint, and thereafter to convict him of the aforesaid contravention, and to adjudge him to suffer the penalties provided by the said Merchandise Marks Act, 1887, and to grant

warrant, in terms of sec. 12, subsec. 1 of the said Act, to a constable to enter the house or premises of the said E. F. at any reasonable time by day, and to search there for and seize and take away any bottles embossed with the trade description, "E. F.'s Aerated Waters," above referred to, and filled with aerated waters not manufactured by the complainer, to the end that they may be declared forfeited to His Majesty under the said Act.

According to Justice.

[*Signed by complainer or his agent.*]

[*Date and place.*]

I concur in the foregoing complaint.

C. D.,
Procurator-Fiscal of Court.

Transference.

1. Against Executor-Dative of Deceased Defender.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], executor-dative of the deceased E. D. [*designation*], conform to decree-dative in his favour by the Sheriff of F. shire, dated 19 , and confirmed by testament-dative following thereon, dated 19 , *Defender*.

The demand of the pursuer is—

For transference against defender of the process now depending before the Court at the pursuer's instance against the said E. D., the first deliverance in which is dated 19 .

Therefore the pursuer craves the Court—

To transfer the said process against the defender, and to grant decree against the defender in terms of the conclusions of said action; and to find him liable in expenses in the event of his offering opposition hereto.

CONDESCENDENCE.

1. [*Narrate inception and conclusions of pending action.*]

2. [*Death of original defender, and appointment and confirmation of present defender as executor.*]

3. [*Date and effect of last interlocutor or interlocutors, so as to show position of action.*]

4. In these circumstances the pursuer finds it necessary to have the said action transferred against the defender, as executor of the said E. D.

PLEA IN LAW.

The defender being the executor-dative of the deceased E. D., the pursuer is entitled to have the action pending against the said E. D. transferred against him as craved.

2. Against Defender's Representatives.

A. B. [*designation*], *Pursuer*,

against

C. D. [*designation*], only child of the deceased E. D. [*designation*], as executor of the said E. D., or otherwise representing him on one or other of the passive titles known in law, *Defender*.

The demand of the pursuer is—

For transference against the defender of the process now depending before the Court at the pursuer's instance against the said E. D., the first deliverance on which is dated ; or otherwise, for decree *cognitionis causa tantum* against the said E. D.'s estate.

Therefore the pursuer craves the Court—

To transfer said process against the defender, and to grant decree in terms of the conclusions thereof; or otherwise, and in the event of the defender producing a valid renunciation of his rights in the estate of the said E. D., to find and declare *cognitionis causa tantum* that [the aforesaid sum of £ sterling, with interest and expenses, *or as the case may be*], and the expenses of this action, are justly addebted and resting-owing by the said E. D. to the pursuer, and that the pursuer has right and interest in the means and estate, heritable and moveable, of the said E. D. for payment thereof, and to attach the same, as accords of law, for the said debt; and to find the defender liable in expenses in the event of his offering opposition hereto.

CONDESCENDENCE.

[*This will be the same as in the preceding form, except* 2, *which will show how the defender represents the pursuer.*]

PLEAS IN LAW.

1. The deceased E. D. having been at the time of his death justly indebted and resting-owing to the pursuer in the sum sued for, the pursuer is entitled to decree against the defender, as representing the said E. D., as craved.

2. In the event of the defender producing a valid renunciation, the pursuer is entitled to decree *cognitionis causa tantum*, and to attach the estates of the said E. D., as concluded for.

3. Against Pursuer's Representatives.

This will easily be adapted from the preceding style. The crave is—

To transfer said process against the defender, to the effect that the pursuer, as defender therein, may be assoilzied from the whole conclusions thereof, with expenses; or otherwise and in the event of the defender producing a valid renunciation of all his rights in the means and estate of the said E. D., to find and declare *cognitionis causa tantum* that the present defender, as representative of the said E. D., has fallen from the instance, and abandoned the said action, and that the present pursuer is entitled to be assoilzied from the conclusions thereof, with expenses; and that the said expenses, together with the expenses hereof, with interest thereon, are justly indebted and owing by the said E. D. to the present pursuer, and that the present pursuer has right and interest in the estates, heritable and moveable, of the said E. D., and is entitled to attach the same, as accords of law, for the said sums and interest as aforesaid.

Transit, Damages for Delay in.—*See* REPARATION, No. 5 (2) (3).

Trespass.—*See* INTERDICT, No. 15; REPARATION, No. 20.

Trust Funds.—*See* DECLARATOR, No. 27; MULTIPLEPOINDING, No. 4.

Trustee, against for Accounting.—*See* ACCOUNTING, Nos. 2 and 6.

Trustee, By, for Payment of Debt.—*See* ACCOUNT, No. 7. *See also* BANKRUPTCY.

Trustees, for Accounting Against, by Legatee.—*See* ACCOUNTING, No. 9.

Trusts Act, 1891.

1. To Compel Trustee who has Resigned to Execute Deed (s. 7).

Sheriffdom of at .

A. B. [*designation*] and C. D. [*designation*], remaining trustees acting under the trust-disposition and settlement of X. Y. [*designation*], *Pursuers*,

against

E. F. [*designation*], a former trustee under said trust-disposition and settlement, *Defender*.

The demand of the pursuers is—

For a decree in terms of sec. 7 of the Trusts (Scotland) Act, 1891, ordaining the defender to concur with pursuers in executing and delivering to G. H. [*designation*] a disposition of a house, No. Street, , belonging to the said trust estate and purchased by the said G. H. at a time when defender was acting as a trustee on said estate.

Therefore the pursuers crave the Court—

To ordain defender, within such time as the Court may appoint, to concur with pursuers, at the expense of the trust estate, in executing and delivering to the said G. H. a valid conveyance of said property; and to find defender liable in expenses.

CONDESCENDENCE.

1. The said X. Y., who died at on 19 , by his trust-disposition and settlement dated , and recorded in the Books of Council and Session 19 , appointed the pursuers and defender to be his trustees and executors. The pursuers and defender duly accepted office, and continued to act as his trustees until , when the defender resigned office.

2. Part of the trust estate so bequeathed consisted of the house No. Street . In the administration of the estate the

pursuers and defender, as trustees foresaid, determined to sell the said house, and on duly disposed of same to the said G. H., with entry as at the term of 19 .

3. After said purchase was completed, but before the disposition thereto was engrossed, the defender resigned office, and his resignation was duly minuted and signed on 19 .

4. The said disposition has now been prepared by M. N., the law agent of the trust, and has been executed by the pursuers as the remaining trusters. The said G. H. has, however, intimated that as the defender was a trustee on the date when the purchase was completed, the disposition ought to bear his signature as one of the disposing trustees.

5. The defender refuses to execute said deed, and the present application is therefore necessary.

PLEA IN LAW.

The defender, as one of the trustees acting on said trust estate at the date when said disposition was completed, is bound to concur with pursuers in executing and delivering a valid conveyance thereof to the purchaser as craved.

2. For Removal of Trustee who has become Incapax (s. 8).

NOTE.—*The application, in the case of a* mortis causâ *trust, is made in the Sheriff Court from which the original confirmation of the trustees as executors issued, and in the case of a marriage contract, in the Sheriff Court of the district in which the spouses are, or the survivor of them is, domiciled. These are the only cases in which application may be made in the Sheriff Court* (*Trusts Act*, 1891, *s.* 8).

Sheriffdom of at .

A. B. [*designation*] and C. D. [*designation*], the trustees, along with defender, appointed by and acting under the trust-disposition and settlement of X. Y. [*designation*], *Pursuers*,

against

E. F. [*designation*], *Defender*.

The demand of the pursuers is—

For removal of defender from the office of trustee under said trust-disposition and settlement, in terms of sec. 8 of the Trusts (Scotland) Act, 1891.

Therefore the pursuers crave the Court—

To find and declare that defender, by reason of insanity [*or* physical,

or mental disability, *or* absence], is incapable of acting as a trustee under said trust-disposition and settlement, and to remove him accordingly.

CONDESCENDENCE.

1. By trust-disposition and settlement, dated , and recorded in the Books of Council and Session [*date*], C. D. [*designation*] disponed his estate in trust to E. D. [*designation*], his son, and to the pursuers. The testator also appointed his trustees to be his sole executors and administrators.

2. The trust purposes were as follows [*state them shortly*].

3. The trust estate consists of [*describe it shortly*].

4. The said C. D. died on or about , survived by his wife, Mrs. G. H. or D., and his three sons, E. D., J. D., and K. D. The said E. D. and the pursuers accepted office as trustees, executors, and administrators, under said trust-disposition and settlement, conform to minute of acceptance, dated , and entered upon the possession and management of the trust estate, all in terms of the said trust-disposition and settlement.

5. The said E. D. is of unsound mind and unable to perform the duties of trustee. Medical certificates to this effect are produced herewith. He is at present an inmate of the Royal Asylum for the Insane, Edinburgh. In these circumstances it is necessary and expedient for the trust estate that the said C. D. should be removed from the office of trustee, and the present application is presented under sec. 8 of the Trusts (Scotland) Amendment Act, 1891, for that purpose.

The persons interested in this application besides the pursuers are the said Mrs. D., residing at , E. D., J. D., and K. D.

PLEA IN LAW.

The defender having become incapable by reason of insanity [*or as the case may be*] from acting as a trustee, should be removed from office as craved.

Tutor.—*See* GUARDIANSHIP.

Ultra Vires, Declarator that Investment is.
—*See* DECLARATOR, No. 27.

Validity of Deed.—*See* DECLARATOR, Nos. 19, 20.

Valuation.—*See* LANDS CLAUSES ACT; SHIPPING.

Vitious Intromitter.—*See* PASSIVE TITLE.

Voiding of Election.—*See* ELECTIONS.

Wages.—*See* PAYMENT; SHIPPING; REPARATION.

Wakening.—*See* MINUTE, No. 23.

Wall.—*See* GABLE.

Wards.—*See* BURGH, &c.

Warrant to Sell, Actions, &c., for.

1. Motions.

(*See generally under* MOTIONS.)

2. Minutes to Carry Back and to Sell in Sequestrations for Rent.

(1) TO CARRY BACK.

In respect that A. B., defender, within designed, has removed from the dwelling-house situated at No. Street, , within mentioned, the furniture, goods, and effects belonging to him which were therein, and subject to the pursuer's right of hypothec for the rent of the said house due at [*term*] last, to premises situated at No. Street, [now occupied by him], under cover of night and without any notice to pursuer [*see note*], warrant is craved to officers of Court to search for and carry back to the said house at No. Street, , said furniture, goods, and effects removed as aforesaid, and which consist of [*enumerate effects, e.g.* a table, six chairs, sofa, &c.],

there to be inventoried and secured in terms of the within warrant. [*If the goods cannot be kept in the original premises for any reason,* e.g. *that the defender's occupation of the premises is at an end, ask warrant for removal to some other place as follows.*] And further, in respect [*explain reason*], warrant is craved thereafter to remove the said furniture, goods, and effects to [*specify where*], or to such other place as the Court may appoint, there to await the further orders of the Court.

NOTE.—*For opinions of Judges of Court of Session as to Sheriffs not granting this warrant without notice to the defender except on special averments justifying that course, see Johnston,* 18 *R.* (*J. C.*) 6; *Gray,* 19 *R.* 25; *M'Lauchlan,* 20 *R.* 41.

(2) TO SELL.

A. B., for pursuer, stated that the rent due by the defender at Whitsunday [*or* Martinmas] 1904 had not been paid, although said term was now come and bygone, and in respect thereof he craved the Court to grant warrant to sell as many of the sequestrated effects as would satisfy and pay the said rent, together with interest and expenses, all in terms of the crave of the writ.

3. Writs for Warrant to Sell.

(1) HORSE AT BUYER'S INSTANCE.

(*See also* REPAYMENT.)

Sheriffdom of at .

A. B. [*designation*], *Pursuer,*
against
C. & D. [*designation*], *Defenders.*

The demand of the pursuer is—

For warrant to sell a bay horse, presently at livery with Messrs. X. Y. & Co., D., bought by pursuer from defenders on 19 for £ , as disconform to warranty embodied in the receipt for said price.

Therefore the pursuer craves the Court—

To grant warrant to the pursuer to sell by public roup the said horse, and to consign the proceeds of the said sale, under deduction of (1) the expenses of this process and of the said sale, and (2) the expense of the said horse's keep from 19 till sold, in the hands of the Clerk of Court to await the orders of the Court; and to find the defenders liable in expenses.

CONDESCENDENCE.

1. On 19 the defenders sold to the pursuer a bay horse, warranted sound and quiet to ride and drive, at the price of £ sterling. The defenders' receipt for the said sum, embodying the said warranty, is herewith produced and referred to.

2. The pursuer had the said horse examined by a veterinary surgeon the day after its purchase, when it was discovered to be unsound and otherwise disconform to the said warranty. The pursuer accordingly, on 19 , wrote to the defenders requiring them to take back the horse and repay the price, but they decline to do so. The said horse was therefore, on 19 , placed at livery with Messrs. X. Y. & Co., livery stable keepers, D., where it still remains.

3. The pursuer is about to raise an action against the defenders for repetition of the price of the said horse, but in view of the expense of its keep it is desirable to sell it without delay.

PLEA IN LAW.

The said horse being disconform to warranty, and having been rejected by the pursuer, he is entitled to warrant of sale as craved.

(2) TO SELL STRAY SHEEP.

(*See* SHEEP.)

(3) TO SELL PERISHABLE GOODS OF WHICH DELIVERY IS REFUSED.

Sheriffdom of at .

A. B. [*designation*], *Pursuer*,
against
C. D. [*designation*], *Defender*.

The demand of the pursuer is—

For warrant to sell [*specify goods*] lying in the warehouse of Messrs. X. Street, Y., sold on by pursuer to defender, for delivery within twenty-four hours, of which defender refuses to accept delivery.

Therefore the pursuer craves the Court—

To grant warrant to the pursuer to sell the said goods and to consign the proceeds of the sale, under deduction of (1) the charges of warehousing the said goods from 19 until sold, (2) the expenses of sale, and (3) the expenses of this application,

in the hands of the Clerk of Court to await the orders of the Court.

CONDESCENDENCE.

1. The pursuer, on 19 , sold to the defender [*specify goods*], then lying in Messrs. warehouse at X. Street, Y., at the price of per basket. It was a condition of the sale that the said goods should be removed by the defender within twenty-four hours.

2. The pursuer, on the forenoon of the said 19 , sent to the defender a sale note for the said goods, but it was returned to them by the defender, with a note refusing to accept delivery [*state reason given, if any*].

3. The said [*goods*], unless immediately sold, will perish and become unsaleable, and warrant of sale is therefore necessary.

PLEA IN LAW.

The defender having purchased the said goods, but having refused to take delivery thereof, warrant to sell them should be granted as craved.

(4) TO SELL CARGO TO PAY FREIGHT.

(*See* WARRANTS OF ARRESTMENT.)

Warrants of Arrestment.

[*To be inserted in crave of initial writ.*]

1. To Arrest Moveables.

And to grant warrant to arrest on the dependence.

2. To Arrest Moveables and Ships, and to Dismantle.

And to grant warrant to officers of Court and their assistants to arrest all ships or vessels of which defender is the owner, part owner, or master, and all goods, debts, sums of money, and other moveable effects belonging to or addebted to the defender, within the jurisdiction of the Court, and to remove the sails, rudders, and anchors from said ships or vessels, all to remain under arrestment until sufficient caution is found by the defender; and to authorise and charge all harbour-masters, officers of customs and others whom it may concern to assist in the due and lawful execution hereof.

3. Minute by Assignee of Decree.

The minute may be signed by the assignee himself or an agent practising in the Sheriff Court where the application is made.

[*Place and date.*] Warrant is craved to arrest the goods, debts, and sums of money of A. [*designation of debtor*], at the instance of B. [*designation of applicant*] as assignee [*or otherwise as the case may be*] of C. [*designation of person at whose instance the extract was issued and in whose right the applicant is*], produced herewith assignation [*or confirmation or as the case may be*], dated . Dated the day of nineteen hundred and .

Water.—*See* NUISANCE; POLLUTION; REPARATION, No. 9.

Well.—*See* NUISANCE.

Widow.—*See* SERVICE.

Wife.—*See* ALIMENT; DONATION; GUARDIANSHIP; SEPARATION; ALIMENT.

Workmen's Compensation Act, 1906.

1. By Injured Workman for Weekly Payment (A. S. 26th June 1907, s. 2).

NOTE.—*In this style the pursuer is a minor suing, with the consent of his father, for injuries sustained by him while in the course of his employment.*

Sheriffdom of at .

(*Under the Workmen's Compensation Act*, 1906.)

A. B., residing with his father, C. B., at Street, , with the concurrence of the said C. B. as his curator at law, *Pursuer*,

against

C. D. & Co., ironfounders and engineers, Street , *Defenders*,

The claim of the pursuer is—

For compensation, in terms of the Workman's Compensation Act,

1906, for injuries sustained by him on or about 19 , while working in the employment of defenders in their foundry, through iron castings or other heavy pieces of iron falling on him, breaking his leg and causing him other injuries, said accident having arisen out of and in the course of his employment with defenders.

Therefore the pursuer craves the Court—

To grant a decree against the defenders for payment to the pursuer of shillings per week from and after the said till the further orders of Court; and to find the defenders liable in expenses.

CONDESCENDENCE.

1. The pursuer is years of age and resides with his father at . The defenders are ironfounders and engineers, with works in Street there.

2. The pursuer was working in the defenders' employment at their said works as an apprentice ironmoulder. He had been with them for nearly a year before the accident in question, his wages being shillings a week with overtime, which brought them up to about shillings a week. The defenders are called upon to produce a statement of the pursuer's wages.

3. On or about 19 the pursuer had received his week's wages shortly after one o'clock, but was still in the employment of the defenders. After receiving his wages he remained close to the gate of defenders' works for a short time, and then remembered that he had left a tool called a moulder's trowel belonging to him in the defenders' workshop, and returned back to get it.

4. He got his trowel, and was on his way back from the workshop, and while in the defenders' works he met two workmen in the defenders' employment, M. N. and O. P., who were engaged in loading a bogie which ran on rails with heavy iron boxes containing iron pipes or castings and sand, and who blocked pursuer's exit from the works.

5. When they had completed loading the bogie the pursuer was asked by the said workmen, or one of them, to give them a hand at shoving or starting said bogie, it being a heavy load to shove and difficult to start, and the pursuer did so.

6. It was a common occurrence in the defenders' works for one of the workmen to ask for or to give such assistance. Persons in the defenders' works were expected to help in such cases, and it was part of the pursuer's ordinary duties to afford help in such cases or to do such work.

7. The said bogie contained some smaller iron boxes piled on the top of a larger box, and as it was started, or while they were attempting to start it, the bogie canted to one side, from what cause the pursuer does not know, and the iron boxes and pipes fell on him. Pursuer in consequence received a compound fracture of his left leg, and he has been unable to work since, being still in the Royal Infirmary, where he was removed after the accident.

8. The said accident happened within the defenders' said work, and arose out of and in the course of the pursuer's employment with the defenders.

9. Notice of the accident was duly sent to the defenders on the pursuer's behalf in terms of the Workmen's Compensation Act, 1906, but the defenders have refused to pay compensation to the pursuer in terms of that Act, and the present proceedings have been rendered necessary.

PLEAS IN LAW.

1. The pursuer having been injured while in the defenders' employment by an accident arising out of and in the course of his employment, is entitled to compensation from the defenders in terms of the Workmen's Compensation Act, 1906.

2. The pursuer being under twenty-one years of age, and his average weekly earnings under twenty shillings, he is entitled to compensation at the rate of his full wages in terms of sec. (1) (b) (b) of the First Schedule to the said Act.

2. By Injured Workman for a Weekly Payment (A. S., 26th June 1907, s. 2).

(*Under the Workmen's Compensation Act*, 1906.)

Sheriffdom of at .

A. B., labourer, residing at Street, , *Pursuer*,

against

C. D., contractor, , *Defender*.

The claim of the pursuer is—

For compensation, in terms of the Workmen's Compensation Act, 1906, at the rate of shillings sterling per week, being 50 per cent. of his average weekly wages while in the defender's employment, in respect of personal injuries sustained by pursuer on 19 at A.M. while working in a puddle field at Reservoir, for the construction of which defender holds a contract. While pursuer was engaged in the ordinary

course of his employment placing stones on a bing, the third finger of his right hand was crushed by a large stone falling heavily on it. Pursuer has since been unfit for work owing to said injury. Defender, though called upon, refuses to compensate pursuer, and the question which has arisen between the parties is whether and to what extent the defender is liable in compensation to pursuer.

Therefore the pursuer craves the Court—

To award compensation in terms of the Workmen's Compensation Act, 1906, and to find defender liable in expenses.

3. By a Widow for Compensation in Respect of the Death of her Son.

Sheriffdom of at .

A. B., widow, residing at , *Pursuer*,

against

C. D., Limited, shipping and forwarding agents, having their registered office at Street, , *Defenders.*

The claim of the pursuer is—

For an award of compensation under the Workmen's Compensation Act, 1906, to her as the mother of E. F., otherwise E. G., who resided at , bachelor, aged , earning on an average shillings a week in cash, and whose earnings during the last three years in defenders' service represent at least £ , and who was a boatman or hand in the employment of defenders on board the lighter , owned by the defenders, plying on the Canal between and , and while on board of and engaged in poling said lighter through the Dock at , in the course of his employment, on nineteen hundred and , his foot slipped and he fell into the hold of said lighter on to a cargo of pig iron, and was so severely injured that he in consequence died next day in the cabin of said lighter at , whereby pursuer, who was wholly dependent upon the said son's earnings, and who knows of no other dependants, was deprived of her sole support, and the question which has arisen between the parties is whether and to what extent defenders are liable in compensation to pursuer.

Therefore the pursuer craves the Court—

To award compensation in terms of the Workmen's Compensation Act, 1906, and to find defenders liable in expenses.

4. By Children (Wholly and Partially Dependent) for Compensation in Respect of Death of Father.

Sheriffdom of at .

A. D., aged 21 years, residing at Cottage by ;
B. D., aged 20 years, farm servant, by ; and
C. D., aged 16 years, residing at Cottage aforesaid, all children of the late D. D., engineman, *Pursuers*,

against

J. M. N. & Company, Limited, coalmasters, having their registered office at Street, , and carrying on business at by , in the county of , *Defenders*.

The claim of the pursuers is—

For an award of compensation under the Workmen's Compensation Act, 1906, in respect that their father, the late D. D., engineman, who for many years next preceding the occurrence of the accident aftermentioned had been an engineman in the defenders' service, earning a regular weekly wage of £ sterling, and upon whose wage the pursuer A. D. was wholly dependent, and the pursuers the said B. D. and C. D. were partially dependent, no other dependants being known to the pursuers, was, whilst engaged at defenders' No. 2 pit, , in the course of his employment, killed by being run over by a wagon or wagons, and the question which has arisen between the parties is whether and to what extent defenders are liable to pursuers or any of them.

Therefore the pursuers crave the Court—

To award compensation in terms of the Workmen's Compensation Act, 1906, and to find defenders liable in expenses.

5. Note of Defence.

Sheriffdom of at .

(*Under the Workmen's Compensation Act*, 1906.)

NOTE OF DEFENCE

in causa

A. B., miner [*designation*], *Pursuer*,

against

C. D. & Company, Limited, coalmasters, having their registered office at Street, , and carrying on business at by , in the county of , *Defenders*.

The claim of the pursuer is resisted on the ground that his said incapacity is not attributable to any accident sustained by him arising out of and in the course of his employment with defenders on said date.

It is denied that he sustained any injury in defenders' employment on said date.

The defenders should be found entitled to expenses.

6. Note of Defence.

Sheriffdom of at .

(*Under the Workmen's Compensation Act*, 1906.)

NOTE OF DEFENCE

in causa

A. B., miner, *Pursuer*,

against

C. D. & Co., Colliery, , *Defenders.*

Full compensation at the rate of is hereby tendered to the pursuer from said 19 till 19 , the latter date being that of service of the initial writ, with such partial compensation thereafter as he may be entitled to.

It is explained and averred, however, that the initial writ was prematurely served upon the defenders when negotiations for a settlement were proceeding, and defenders should be found entitled to expenses.

7. Minute by Employers Consenting to Award of Compensation Craved.

Sheriffdom of at .

(*Under the Workmen's Compensation Act*, 1906.)

MINUTE FOR DEFENDERS

in causa

A. B. [*designation*], *Pursuer*,

against

C. D. & Company, Limited, coalmasters, having their registered office at Street, , and carrying on business at , in the county of , *Defenders.*

X. Y., for the defenders, consented to an award of compensation being made in favour of the pursuer against them at the rate of per week as craved for in the initial writ, with expenses.

8. Minute of Withdrawal of Claim.

Sheriffdom of at .

(*Under the Workmen's Compensation Act*, 1906.)

MINUTE FOR PURSUER

in causa

A. B., fireman, Street, , *Pursuer*,

against

A. & B., , shipbrokers, , *Defenders.*

L. M., for pursuer, states to the Court that this case has been settled, and respectfully craves the Court for permission to withdraw the action.

9. Minute for both Parties Craving Dismissal of Claim for Compensation.

Sheriffdom of at .

JOINT MINUTE

(*In Workmen's Compensation Action*)

in causa

X. Y., widow, residing at , *Pursuer*,

against

A. & B., Limited, shipping and forwarding agents, having their registered office at Street, , *Defenders.*

C. D. for the pursuer and E. F. for the defenders concur in stating to the Court that the action has been settled extrajudicially, on terms set forth in memorandum of agreement between the parties, dated nineteen hundred and , lodged with the Sheriff-Clerk, , to be recorded in the Special Register of the Sheriff Court of at , in terms of the Workmen's Compensation Act, 1906, and crave the Court to dismiss the action, and find no expenses due to or by either party.

10. Application to Record Memorandum of Agreement.

A. (FOR A SLUMP PAYMENT.)

A. B. [*designation*], *Pursuer*,

against

C. D. & Co. [*designation*], *Defenders.*

The pursuer claimed compensation from the defenders in respect of personal injury, viz.:—[*State nature of injury very shortly.*]

caused by accident in the employment of the defenders at , on 19 . On 19 the parties agreed to settle the claim of the pursuer against the defenders for the sum of £ , and on same day said sum was paid by defenders to the pursuer. The pursuer accepted said sum in full and final settlement and discharge of all compensation due or to become due to him from the defenders in respect of said injuries, and he agreed to terminate his right to receive any further payments of compensation from defenders in respect of said accident.

It is requested that this memorandum be recorded in the Special Register of the Sheriff Court of at .

To The Sheriff-Clerk,
Court House.

11. Application to Record Memorandum of Agreement.

B. (For Use when Weekly Payments are Finished.)

A. B. [*designation*], *Pursuer*,
against
C. D. & Co. [*designation*], *Defenders.*

The pursuer claimed compensation from the defenders in respect of personal injury, viz.:—[*State nature of injury very shortly.*]

caused by accident in the employment of ["*defenders*" [*or*] "*A. B.* [*design him*] *a contractor employed by the defenders*"] at , on 19 .

The question in dispute, which was as to the amount of compensation payable to the pursuer, was determined by agreement.

The agreement was made on 19 , and was as follows:—That the defenders pay to the pursuer the sum of £ per week during his incapacity.

On 19 the pursuer acknowledged that the defenders had paid to him the whole compensation due to him in respect of said accident, and he agreed to terminate his right to receive any further payments of compensation from defenders in respect of said accident.

It is requested that this memorandum be recorded in the Special Register of the Sheriff Court of at .

To the Sheriff-Clerk,
Court House.

12. Application to Record Memorandum of Agreement.

C. (REDEMPTION FORM.)

A. B. [*designation*], *Pursuer*,
against
C. D. & Co. [*designation*], *Defenders.*

The pursuer claimed compensation from the defenders in respect of personal injury, viz.:—[*State nature of injury very shortly.*]

caused by accident in the employment of ["*defenders*" [*or*] "*A. B.* [*design him*] *a contractor employed by the defenders*"] at , on 19 .

The question in dispute, which was as to the amount of compensation payable to the pursuer, was determined by agreement.

The agreement was made on 19 , and was as follows:—

On 19 the parties agreed to redeem said weekly payments by payment of and on 19 said sum was paid by defenders to pursuer in redemption of said weekly payments.

It is requested that this memorandum be recorded in the Special Register of the Sheriff Court of at .

To the Sheriff-Clerk,
Court House.

[*Place and date.*]

Act. X. Y.

Minute called. The Sheriff-Substitute, on the motion of the defenders, and in terms of sec. 5 of the Act of Sederunt relating to the Workmen's Compensation Act, 1897, grants authority to the defenders to serve a copy of the minute upon M. & N., being parties interested, and ordains the said M. & N., if so advised, to lodge a notice of appearance in the hands of the Clerk of Court at within seven days from the service of said minute.

13. Minute for Employer Objecting to Recording of a Memorandum of Agreement (A. S., 26th June 1907, s. 12).

Sheriffdom of at .

(*Workmen's Compensation Act*, 1906.)

MINUTE FOR

C. D. & Co. [*designation*], *Defenders*,

in causa

A. B., labourer, residing at No. Terrace, ,

Pursuer,

against

The said C. D. & Co., *Defenders*.

Of this date the claimant was injured in the course of his employment with the respondents at Iron Works, the eyelid of his left eye being burnt by a spark from a ladle containing molten metal. [Date.]

The defenders have paid to the pursuer the sum of for each week since the accident, making in all the sum of £ as compensation in respect of said injury. [Dates of weekly payments.]

Of this date the pursuer returned to work at . [Date.]

Of this date the pursuer made application by his agent, Mr. E. F., solicitor, , to the Sheriff-Clerk of at to have a memorandum of agreement between the pursuer and the defenders recorded in the Special Register of the Sheriff Court. [Date.]

Of this date the defenders intimated their objection to the recording of the agreement on the ground that the pursuer was no longer incapacitated from following his usual employment. [Date.]

Of this date the pursuer made application by his agent, Mr. F. G., writer, , to have another memorandum of agreement recorded in the said Special Register, the said memorandum stating that the pursuer had sustained injury to his right eye. [Date.]

The defenders object to the said memorandum of agreement being recorded, in respect that it does not state correctly the injury sustained by the pursuer, and also in respect that they are advised by experts that the pursuer has completely recovered from the said accident, and is now quite able to return to his work.

Dated this 19 .

14. Minute for Warrant to Record Memorandum of Agreement.

Sheriffdom of at .

Minute for A. B., labourer, presently residing at .

The said A. B., who was a labourer in the employment of C. D. and

Company, Limited, coalmasters, having their registered office at Street, , and carrying on business at Colliery, parish of and county of , earning shillings (s.) a week, and who was, by accident arising out of and in the course of his employment, injured on or about nineteen hundred and , while assisting to put a large fly wheel into a wagon at Number 2 Pit, Colliery, the wheel having slipped, thereby resulting in one of the fingers of his right hand being severely crushed, necessitating complete amputation thereof, and while he was in the employment of the said C. D. & Company, Limited, and has in consequence, since the said day of nineteen hundred and , been incapacitated for work; and he agreed with the said C. D. & Company, Limited, upon shillings per week as the amount of compensation payable to him under the Workmen's Compensation Act, 1906; but on presentation of a memorandum of agreement expressing that arrangement to the Sheriff-Clerk, he has refused to record the same, in respect that the said C. D. & Company, Limited, had notified him that they disputed the genuineness of, and objected to the recording of, said memorandum of agreement, which the said C. D. & Company, Limited, have no grounds for doing, and have not lodged a minute in terms of sec. 12 of the Act of Sederunt, 26th June 1907.

Therefore the said A. B. craves the Court—

To grant warrant to the Sheriff-Clerk to record the said memorandum of agreement, a certified copy of which is hereto attached, and in the event of the said C. D. & Company, Limited, appearing to oppose, to find them liable in expenses.

15. Minute Objecting to the Granting of the Foregoing Warrant.

Sheriffdom of at .

Minute for C. D. & Company, Limited, coalmasters, having their registered office at Street, , and carrying on business at Colliery, in the parish of and county of , objectors to the recording of a memorandum of agreement which is sought to be recorded by A. B., labourer, presently residing in the Home, , under section 9 of the Second Schedule to the Workmen's Compensation Act, 1906.

The said C. D. & Company, Limited, object to the recording of

said memorandum of agreement on the ground that it is not genuine, in respect that the period during which compensation at said rate was to be paid was limited by agreement to the period of the pursuer's total incapacity for work, and that this was a material term of the agreement entered into between the parties.

It is explained that the injury to the claimant was one to the first finger of his right hand, and the respondents aver that they were not advised that the injury sustained necessitated the amputation of said finger.

It is explained and averred that in terms of paragraph 12 of the Act of Sederunt of 20th June 1907 this question falls to be settled by arbitration.

The objectors should be found entitled to expenses.

16. Minute for Employer for Review of a Weekly Payment under a Memorandum of Agreement (A. S., 26th June 1907, s. 9).

Sheriffdom of at .

(*Under the Workmen's Compensation Act*, 1906.)

MINUTE FOR DEFENDERS

in causa

A. B. [*designation*], *Pursuer*,

against

C. D. & Co. [*designation*], *Defenders*.

The pursuer, on or about , while in the employment of the defenders at , met with an accident involving . He claimed compensation for these injuries, and an agreement was made on or about the for payment to the pursuer of compensation at the rate of during his total incapacity for work. A memorandum narrating said agreement was recorded with the Sheriff-Clerk of at on .

The pursuer has recovered from his injuries, has been for some time, and is now, fit for work. Alternatively, he has regained his former earning capacity, and any incapacity from which he now suffers is not attributable to or connected with said accident.

The defenders therefore respectfully crave the Court—

To reduce or terminate their liability to pay compensation to the pursuer, and to find them entitled to expenses.

17. Application by Employers for Review of a Weekly Payment when no Memorandum Recorded.

Sheriffdom of at .

(*Under the Workmen's Compensation Act*, 1906.)

C. D. & Co. [*designation*], *Pursuers*,
against
A. B. [*designation*], *Defender.*

The claim of the pursuers is—

For an award under the Workmen's Compensation Act, 1906, declaring that the defender's right to compensation under the Act in respect of injury to , due to accident sustained by him while in the pursuers' employment at , on or about , ceased on or at such subsequent date as to the Court may seem just; or alternatively, if the pursuers are not entitled to have the defender's said right to compensation terminated as aforesaid, then to grant such award of partial compensation as to the Court shall seem just. It is explained and averred that the defender was paid compensation in respect of said injury at the rate of from the date of said accident to the , on which date it was stopped. The pursuers contend that the incapacity of the defender for work, in respect of which said weekly payment was agreed to be made, entirely ceased at said date of stoppage, or at least became greatly lessened on said date. Alternatively, if he had not regained his former earning capacity on said date, any incapacity from which he suffered was not attributable to or connected with said accident. The question which has arisen between the parties is as to whether the defender is entitled to compensation beyond said .

Therefore the pursuers crave the Court—

To grant an order finding that the defender's right to claim compensation under the Workmen's Compensation Act, 1906, ceased as at the , or at such other date as to the Court may seem just; or alternatively, in the event of the pursuers being unsuccessful in this crave, to grant such award of partial compensation as to the Court may seem just; and to find the defender liable in expenses.

18. Answers by Pursuer in Application for Review of Award of Weekly Compensation Made by Employers.

Sheriffdom of at .

ANSWERS FOR PURSUER

in causa

A. B., miner, [*address*], *Pursuer*,

against

C. D. & Co., Limited, coalmasters, having their registered office at Street, , and carrying on business in , in the county of , *Defenders*.

The pursuer respectfully craves the Court to refuse the motion contained in defenders' minute, No. of Process, in respect that the incapacity of the pursuer for work has not ceased. Explained that since last pursuer has been working in defenders' employment running hutches at the pit head. This is work which is usually performed by a lad of 15 or 16 years of age, and defenders paid pursuer at the rate of per shift. The full compensation payable under the Interlocutor of 19 is less than the difference between pursuer's wages prior to the accident and his wages subsequent to the accident. Defenders have paid pursuer the full compensation up till 19 , when without notice or without any proposal to pay partial compensation the defenders stopped payment under the Interlocutor of 19 entirely, notwithstanding that the pursuer still suffers from the effects of the accident which he met with in the defenders' employment, and is unable to follow his occupation as a miner.

19. Minute for Both Parties for Remit to Medical Referee (A. S., 26th June 1907, ss. 9, 15).

Sheriffdom of at .

(*Under the Workmen's Compensation Act*, 1906.)

MINUTE FOR THE PARTIES

in causa

A. B., brusher, , *Pursuer*,

against

C. D. & Co., Colliery, , *Defenders*.

In respect that the said A. B., on 19 , sustained an injury to the left side of his face and left eye while in the course of his employment with the defenders at said Colliery [as a direct consequence of which injury the said A. B. has had his left eye removed], and by agreement between the parties has been and is being paid compensation under the Workmen's Compensation Act, 1906, and in respect that the defenders now aver that the pursuer has completely recovered from the effects of his injury and is fit to resume his ordinary work as a miner, which contention the pursuer disputes, and avers that he is only fit for surface work and not for the ordinary duties of a miner below ground, and the parties being at variance and no agreement being likely to be arrived at, therefore the said A. B. and the said C. D. & Co. crave the Court, in terms of sec. 15 of the First Schedule of the Workmen's Compensation Act, 1906, to refer the matter to Dr. G. M. as medical referee, being an eye specialist, and having formerly acted in the case as medical referee, including in such reference whether any incapacity of which the said A. B. may now suffer is due to said accident. The parties consent to the foregoing reference being proceeded with under Schedule I., sec. 15 of the Workmen's Compensation Act, 1906, notwithstanding that the dates for the various steps of procedure have not been observed.

20. Another Form of Minute for Both Parties for Remit to Medical Referee (A. S., 26th June 1907, ss. 9 and 15).

Sheriffdom of at .

MINUTE FOR THE PARTIES

in causa

J. W., brusher, , *Pursuer*,

against

C. D. & Co., Colliery, , *Defenders.*

In respect that the said J. W., on 19 , sustained an injury to the left side of his face and left arm while in the course of his employment with the defenders at said Colliery, and by agreement between the parties has been paid compensation under the Workmen's Compensation Act, 1906, and in respect that the defenders now aver that the pursuer has so far recovered from the effects of his injury as to be fit for surface work, which contention the pursuer and the parties being at variance, and no agreement being likely to be arrived at, therefore the said J. W. and the said C. D. & Co. crave the Court, in terms of sec. 15 of the First Schedule of the Workmen's Compensation Act, 1906, to refer the matter to the medical referee, being an eye specialist, including in such reference whether any incapacity of which

the said J. W. may now suffer is due to said accident. The parties consent to the foregoing reference being proceeded with under Schedule I., sec. 15 of the Workmen's Compensation Act, 1906, notwithstanding that the dates for the various steps of procedure have not been observed on either side.

21. Minute for Defenders to give Effect to Remit to Medical Referee.

Sheriffdom of at .

MINUTE FOR DEFENDERS

in causa

A. B. [*designation*], *Pursuer*,

against

C. D. & Co., Colliery, , *Defenders.*

X. Y., for the defenders, stated that the parties agreed to remit the question of the pursuer's fitness for employment to a medical referee in terms of sec. 15 of the First Schedule of the Workmen's Compensation Act, 1906, and on or about 19 a joint minute to that effect was lodged with the Sheriff-Clerk of , who remitted the case to Dr. F. G., one of the medical referees appointed to act for that district under the Workmen's Compensation Act, 1906; that on 19 the said medical referee gave a certificate certifying that the pursuer had recovered from the injury sustained by him and was fit for his former work, a copy of which certificate, together with a copy of the joint minute referred to, are hereto annexed, and therefore craves the Court to end the pursuer's compensation as at 19 , in view of the terms of the said medical referee's report, and in the event of the pursuer appearing to oppose the crave of this minute, to find him liable in expenses.

22. Minute for Stated Case under Sched. II., s. 17 (A. S., 26th June 1907).

Sheriffdom of at .

MINUTE FOR DEFENDERS

in causa

A. B., miner, *Pursuer*,

against

C. D. & Co., Limited, coalmasters, having their registered office at Street, , and carrying on business at No. 1 Pit, , in the county of , *Defenders.*

The defenders respectfully request the Sheriff-Substitute to state

a case for the opinion of the Division of the Court of Session in terms of sec. 17 (b) of the Second Schedule appended to the Workmen's Compensation Act, 1906.

The following question is the question of law proposed as the subject of the case:—

In the circumstance above set forth, was I right in granting warrant to record the memorandum of agreement? [*or as the case may be*].

23. Minute by Employee's Widow in an Allocation of Compensation Money Paid into Court under a Memorandum of Agreement (under s. 9 of Sched. I. of the Act).

Sheriffdom of at .

(*Under the Workmen's Compensation Act*, 1906.)

MINUTE FOR

Mrs. A. B. or C., residing at Street, , widow of the late J. C., miner, who resided there, one of the claimants in the process; the said Mrs. A. B. or C. and Others, *Pursuers*,

against

The Colliery Company, Limited, coal masters, , *Defenders*.

X. Y. for the minuter states to the Court that on account of the variation of circumstances of the minuter one of the dependants herein since the Court pronounced its last order, viz.:—The illness of the minuter and her present temporary change of residence in consequence thereof, as certified and recommended by the medical certificate herewith produced [*or* the continued illness of the minuter and her necessitous circumstances caused thereby and through the present unemployment of her sons, *or as the case may be*], she finds it necessary to make a further application to the Court in terms of sec. 9 of Schedule I. of the Workmen's Compensation Act, 1906, to pronounce an order authorising the Sheriff-Clerk to uplift and pay to her out of the consigned fund a sum of pounds sterling, in addition to, and without prejudice to, the quarterly payments presently being paid to her in terms of the original order of allocation, together with the expenses of this application.

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